VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1959

No. [redacted] 35

NICHOLAS A. STIRONE, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1959
CERTIORARI GRANTED APRIL 27, 1959

TABLE OF CONTENTS

Appendix:		Page
I.	Relevant Docket Entries	1a
II.	Indictment No. 14871	6a
III.	Motion for Bill of Particulars	9a
IV.	Bill of Particulars	12a
V.	Motion for Consolidation	15a
VI.	Objections by Defendant to Consolidation	16a
VII.	Order of Court Refusing Consolidation	19a
VIII.	Excerpts from Transcript of Testimony	20a

GOVERNMENT'S EVIDENCE

	Dir.	Cr.	Red.	Rec.
Dorothy Flanagan	20a			
Thurman C. Tejan	22a			
William C. Bowden	26a		34a	35a
Joseph V. Moreschi	36a		37a	
Richard C. Witt	43a			
Robert Ong	44a	46a		
Joseph A. Pasuit	47a			
George Herbert Keisling	49a	53a	55a	
Clifford H. Crain	55a			
Charles D. Meyers	69a	81a		
William G. Rider	82a			
Richard C. Witt	95a			

	Dir.	Cr.	Red.	Rec.
William G. Rider	99a	113a	159a	163a
Jeanne A. Rider	164a	175a		
George Thomas Doherty	180a			

DEFENDANT'S EVIDENCE

	Dir.	Cr.	Red.	Rec.
Nicholas A. Stirone	183a	188a		
Robert O. Dierker	212a			
Jacob G. Kassab	215a			

GOVERNMENT'S REBUTTAL

	Dir.	Cr.	Red.	Rec.
George Thomas Doherty	218a	224a	241a	241a
Andrew Hawthorne	241a	243a	248a	
Reading— Defendant's Exhibit "O"				250a
Andrew Hawthorne		253a		
August C. Duval	255a	257a		
Albert L. Russell	259a			
Max Clark Harrison	261a			

IX. Charge of the Court . . . 281a
X. Opinion of the Court . . . 304a
XI. Motion for Judgment of Acquittal or a New Trial . . . 320a
XII. Additional Reasons for New Trial . . . 327a
XIII. Defendant's Amendment to Motion for New Trial . . . 329a
XIV. Stipulation . . . 330a
XV. Indictment No. 14872 . . . 331a
XVI. Indictment No. 14873 . . . 334a
XVII. Judgment and Commitment . . . 337a

	Original	Print
Proceedings in U.S.C.A. for the Third Circuit	527	527
Opinion, Goodrich, J.	527	527
Dissenting opinion, Hastie, J.	536	535
Judgment	541	539
Motion for extension of time within which petition for rehearing may be filed	543	540
Order extending time to file petition for rehearing	545	541
Petition for rehearing	546	541
Answer to appellant's petition for rehearing	562	552
Per curiam opinion on rehearing	564	553
Dissenting opinion on rehearing, Biggs, Ch.J.	564	554
Order denying petition for rehearing	566	555
Order staying issuance of mandate	567	555
Clerk's certificate (omitted in printing)	568	555
Order allowing certiorari	569	556

APPELLANT'S APPENDIX

I.

RELEVANT DOCKET ENTRIES

1956

Mar. 20—True Bill.

Mar. 20—Indictment filed.

Mar. 23—Request of U.S. Atty, for summons filed.

Mar. 23—Summons Issued.

Mar. 29—Summons returned. Executed 3/28/56.

Apr. 2—Bond for deft. Nicholas A. Stirone taken by U. S. Comm. Snodgrass, Jr. in the amt. of $500.00 recd. and filed.

Apr. 5—The deft. Nicholas A. Stirone, pleads NOT GUILTY in open court.

Apr. 10—Motion for consolidation of trial in cases 14871, 14872 and 14873 Criminal.

Apr. 18—Objections to Motion to consolidate cases for trial filed by deft. with acceptance of service thereon.

Apr. 25—Motion for Bill of Particulars filed by deft. with acceptance of service thereon.

Apr. 25—Motion to Dismiss Indictment filed by deft. with acceptance of service thereon.

May 21—Motion for continuance filed and Order entered directing the argument on the defts. Motions in the above action be and the same hereby is continued until further Order of court. (Sorg, J)

July 12—Hearing on Motion to Dismiss and Motion for Bill of Particulars begun before Sorg, J.

July 12—Hearing concluded. C.A.V. Trial memo filed. (Orders to be entered)

Sept. 14—Praecipe for appearance for deft. Nicholas A. Stirone, filed.

Sept. 26—Order of Sorg, J. entered directing U. S. to file within 30 days bill of particulars as to paragraph 6, 7, 7a, 7b, 8, 9 and 9a of deft's motion for bill of particulars and further denying all other matters in said motion.

Oct. 9—Bill of Particulars filed by U. S.

Oct. 23—Supplemental Motion to Dismiss indictment filed by deft. Stirone.

Oct. 23—Motion for more specific bill of particulars filed by deft. Stirone.

Dec. 5—Hearing on Motions for Bill of Particulars; Dismiss Indictment; Supplemental motion to dismiss Indictment and for more specific Bill of Particulars begun before Sorg, J.

Dec. 5—Hearing on above Motions concluded C.A.V. Trial memo filed. (Rep-H. Thomas) 1957

Jan. 4—Order entered directing that the Motion of the U. S. for consolidation of Crim. Nos. 14871-14872 and 14873 is hereby denied. (Sorg, J)

Jan. 4—Order entered directing Deft's Motion to dismiss the Indictment and Supplemental Motion to dismiss the indictment are hereby denied. (Sorg, J)

Jan. 4—Order entered directing deft's. Motion for more specific Bill of Particulars is hereby denied. (Sorg, J)

Feb. 27—Praecipe for appearance for counsel for deft. filed.

Feb. 28—Motion for withdrawal of appearance of counsel for deft. filed and Order entered directing leave to file Motion to withdraw. (Sorg, J)

May 15—Subpoenas to Produce returned. Executed 5/13/57.

June 4—Trial opens before Miller, J. and jury.
June 5—Trial continues.
June 6—Trial continues.
June 7—Trial continues.
June 10—Trial continues.
June 11—Trial continues.

June 11—Defendant moves orally for judgment of acquittal. Motion denied orally by the Court.
June 12—Trial continues.
June 13—Trial continues.
June 14—Trial continues.
1957
June 17—Trial continues.
June 18—Trial continues.
June 19—Trial continues.
June 19—Trial concludes. . .Trial memo filed.

June 19—Jury returns with a verdict of GUILTY as charged.

June 19—Verdict sheet filed. (Bond contd. orally by Court)

June 24—Motion for Judgment of Acquittal or a New Trial filed by deft. Stirone and order entered directing the deft. shall have 10 days after the testimony and Judge's charge are transcribed to file additional reasons in support of his Motion for Judgment of Acquittal or a New Trial. (Miller, J) Acceptance of service thereon.

June 24—Motion for Arrest of Judgment filed by deft. Stirone with acceptance of service thereon.

Aug. 12—Transcripts of proceedings of trail held in Pgh, Pa. commencing 6/4/57 before Miller, J. and a Jury filed. (Volumes I, II, III)

Aug. 21—Additional reasons for New Trial filed by deft. with acceptance of service thereon.

Aug. 22—Additional reason for New Trial filed by deft.

Aug. 23—Praecipe for appearance for counsel for deft. Nicholas A. Stirone, filed.

Sept. 4—Hearing on Motion for Judgment of Acquittal or New Trial and Motion for Arrest of Judgment begun before Miller, J.

Sept. 4—Hearing concluded C.A.V. Trial memo filed. (Deft's. counsel to file brief no later than 9/17/57. (Rep-H. Smith)

Sept. 25—Defendant's amendment to motion for new trial filed.

Nov. 12—Stipulation of counsel as to handbook for jurors filed.

Dec. 5—Opinion filed and Order entered directing the Deft's Motions for arrest of Judgment and Judgment of acquittal or new trial are hereby denied. Further ordered that U. S. Atty. produce the deft. before this court for imposition of sentence on 12/11/57 at 10 A.M. (Miller, J)

Dec. 6—Order entered directing the last sentence of the Order of 12/5/57 fixing the date for imposition of sentence in the above case for 12/11/57 at 10 A.M. is hereby amended as follows: U. S. Atty. to produce the deft. before this Court for sentence on 12/12/57 at 11 A.M. (Miller, J)

Dec. 12—The sentence of the Court is that the deft. Nicholas A. Stirone be imprisoned for a period of 3 yrs. and directed to pay a fine of $5000.00 and costs of prosecution. (Miller, J)

Dec. 12—Copies issued.

Dec. 12—Notice of appeal filed by Deft.

Dec. 12—Election filed by Deft. (Deft. elects not to enter upon the service of the sentence imposed Dec. 12, 1957, pending appeal taken therefrom to the U. S. Court of Appeals filed 12/12/57.)

Dec. 12—Bond in the amount of $5,000.00 pending appeal for def't Nicholas A. Stirone taken by the Clerk of Courts and filed.

Dec. 12—Bond (Cash) in the amount of $250.00 for costs on Appeal filed with the Clerk of Courts by defendant Nicholas A. Stirone.

Dec. 12—Copy of Notice of Appeal, Election not to commence service of sentence and a statment of the docket entries to date forwarded to Clerk, U.S. Court of Appeals for the Third Circuit. Letters to Counsel and to Honorable John L. Miller.

Dec. 18—Motion to depart jurisdiction filed and Order of Miller, J., entered granting permission to def't to leave jurisdiction of this Court from 12/25/57 to 1/1/58 on condition that if

1958

Jan. 13—Order entered directing the Clerk to make as part of the Record on appeal in this case all subpoenaes issued on behalf of the United States Government in the above-entitled case.

Feb. 3—Record on appeal forwarded to Clerk, United States Court of Appeals for the Third Circuit and letters sent to counsel and Court.

Feb. 10—Copy of letter received from United States Court of Appeals advising that case was docketed at No. 12,543.

Feb. 10—Receipt for documents and exhibits in the above case received from Clerk, United States Court of Appeals dated February 6, 1958.

Indictment No. 14871

II

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA vs. NICHOLAS A. STIRONE	No. 14871 Criminal (18 U.S.C. Section 1951)

The Grand Jury charges:

1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of materials and supplies for use in the making of ready mixed concrete used in the construction and erection of a factory or plant for processing of steel.

2. That at all times hereinafter mentioned, William G. Rider was a party to a contract to supply ready mixed concrete for the erection of a steel processiong plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture or mixing of ready mixed concrete, and more particularly, from outside the State of Pennsylvania into the State of Pennsylvania.

3. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor, President of the Heavy Engineering Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor.

4. That commencing on or about the first day of March, 1951, the exact date being to the Grand Jurors unknown, and continuing thereafter up to on or about December 31, 1953, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully, and unlawfully obstruct, delay an affect interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce, by extortion, to-wit, by obtaining property to the value of $31,274.13 in the form of money from William G. Rider, induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready mixed concrete.

5. Defendant Nicholas A. Stirone threatened and caused William G. Rider to fear that preparation and delivery of the mixed concrete referred to in paragraph two would be delayed or altogether prevented and that as a result said William G. Rider would suffer financial loss if the defendant did not obtain the property as stated in paragraph four.

6. Defendant Nicholas A. Stirone threatened the said William G. Rider that defendant would, in his capacity as a labor representative, wrongfully and corruptly embark upon a course of oppressive action against said William G. Rider by preventing movement of supplies and materials and ready mixed concrete.

Contrary to the terms and provisions of Section 1951, Title 18, United States Code.

A True Bill

....

Foreman

....

D. MALCOLM ANDERSON
United States Attorney

III

MOTION FOR BILL OF PARTICULARS

Defendant moves the court for an order requiring the Government to furnish defendant, within a time to be therein specified, a written bill of particulars as to the following matters alleged in the indictment herein, as follows:

1. State the date, the names of all the parties thereto, and the terms and provisions of the contract whereunder William G. Rider was to supply ready mixed concrete for the erection of a steel processing plant at Allenport, Pennsylvania, referred to in Paragraph 2 of the indictment. State whether said contract was written or oral. If written, furnish defendant with copy. If oral, state substance of contract.

1a. State where the interstate commerce referred to in Paragraph 2 originated and where it ended.

2. State when and where William G. Rider caused supplies and materials to move in interstate commerce between the various points of the United States and the site of his plant for the manufacture of mixing of ready mixed concrete as referred to in Paragraph 2.

3. State the location of the plant of William G. Rider for the manufacture or mixing of ready mixed concrete as referred to in Paragraph 2.

4. Is it claimed by the Government that defendant was an agent and representative of Local 1058, General Construction, General Laborers and Material Handlers Union representing employees of William G. Rider in connection with the performance of his contract to supply ready mixed concrete for the erection of said steel processing plant? If so claimed, state when and where and the method by which defendant became such representative.

4a. State whether any of the employees of the labor union referred to in Paragraph 3 were employed by Rider in connection with the performance of the contract referred to in Paragraph 2.

5. State specifically when and where between March 1, 1951 and September 1, 1953, in the Western District of Pennsylvania, the defendant delayed and affected interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce by extortion, as referred to in Paragraph 4.

6. State when and where defendant is alleged to have extorted $31,274.13 in the form of money from William G. Rider. State how the Government contends such money was extorted. Give the dates and places where property of Rider was allegedly extorted. Give the form of property involved, whether by cash, checks or other property. If in the form of checks, give the number, dates and payees. If in the form of cash, give the dates and places where such cash was allegedly turned over to defendant.

7. State when, where and to whom defendant is alleged to have made threats of labor disputes and threats of the loss of, or obstruction and prevention of, performance of his contract to supply ready mixed concrete, as referred to in Paragraph 4.

7a. State whether alleged threats were oral or in writing.

7b. If in writing, attach copies. If oral, state substance thereof.

8. State when and where and how defendant threatened and caused William G. Rider to fear that mixed concrete referred to in Paragraph 2 would be delayed or altogether prevented and as a result of said Rider would suffer financial loss if defendant did not obtain the property, as stated in Paragraph 4.

9. State when and where and under what circumstances defendant is alleged to have threatened the said Rider that defendant would, in his capacity as a labor representative, embark upon a course of oppressive action against said Rider by preventing movement of supplies and materials and ready mixed concrete, as charged in Paragraph 6.

9a. State where the "course of oppressive action" against Rider referred to in Paragraph 6 consisted of.

Dated: April , 1956.

Attorneys for Defendant

IV

BILL OF PARTICULARS

This bill of particulars, furnished by the United States to the defendant Nicholas A. Stirone, pursuant to the order dated September 26, 1956 by the Honorable Herbert P. Sorg, District Judge, is as follows:

6. The defendant extorted from William G. Rider the sum of $31,274.13 by threats that he would prevent said William G. Rider from carrying out a contract to supply ready mixed concrete to Ragnar Benson, Inc., for use in the erection of a hot strip mill at Allenport, Washington County, Pennsylvania, unless payment was made to said defendant by Rider of fifty cents per cubic yard of ready mixed concrete sold by him. The said threats were made in the fall of 1951 and from February 28, 1952 to December 31, 1953, and payments were to be made when Rider received payments for the ready mixed concrete delivered. The said threats were made at a plant of the Duquesne Slag Company, at Belle Vernon, Pennsylvania, and by telephone to Charleroi, Pennsylvania. Payment was made by sixteen checks payable to the defendant. The numbers, dates and amounts of the checks is as follows

Check Number	*Date*	*Amount*
1516	2/28/52	$1,500.00
1993	9/4/52	2,000.00
2069	9/19/52	1,500.00
2073	9/23/52	2,141.75
2210	10/31/52	2,189.75
2257	11/25/52	2,423.50
2322	12/31/52	1,963.87
2497	3/3/53	1,021.25

Check Number	*Date*	*Amount*
2541	3/20/53	1,180.75
2644	4/21/53	1,511.25
2743	5/29/53	1,713.25
2836	7/13/53	1,725.50
2895	7/29/53	749.00
2984	9/15/53	3,266.76
3167	11/14/53	1,395.50
14	12/31/53	4,992.00

7. To William G. Rider and his wife Jeanne Rider in the fall of 1951 and between February 28, 1952 and December 31, 1953 at Belle Vernon and by telephone to Charleroi, Pennsylvania.

7a. Orally.

7b. Not applicable as threats were oral.

8. In the fall of 1951 and thereafter from February 28, 1952 to December 31, 1953 at Belle Vernon, Pa. and by telephone to Charleroi, Pennsylvania, defendant orally threatened that unless payments were made as hereinabove set forth, he, the defendant, would see to it that Rider did not hold his contract to deliver ready mixed concrete to Ragnar Benson, Inc., that Rider would be unable to make delivery of the said ready mixed concrete and that; if payments were made, the defendant would make sure there were no strikes on the job.

9. Threats were made at Belle Vernon, Pa., and by telephone to Charleroi, Pa., in the fall of 1951, and from February 28, 1952 to December 31, 1953 under the circumstances that the defendant was attempting to and was instilling in Rider fear of economic loss for purpose of extorting money from the said Rider. The threats in the fall of 1951 were made at the plant of the Duquesne Slag

Company in Belle Vernon, Pa., and subsequent threats were by telephone calls to Rider's place of business and home at Charleroi, Pa.

9a. Defendant threatened that, in his capacity as a labor representative, he would cause and bring about labor disputes and strikes and cause Rider to lose and be unable to comply with his contract to supply ready mixed concrete to Ragnar Benson, Inc.

D. MALCOLM ANDERSON

D. Malcolm Anderson
United States Attorney

Hubert I. Teitelbaum
First Assistant U. S. Attorney

IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
v.
NICHOLAS A. STIRONE

NO. 14871 CRIMINAL
NO. 14872 CRIMINAL
NO. 14873 CRIMINAL

V

MOTION FOR CONSOLIDATION

And now comes the United States of America, by D. Malcolm Anderson, United States Attorney, and Hubert I. Teitelbaum, First Assistant United States Attorney, and moves the Court for consolidation of the trials in the above captioned matters.

D. MALCOLM ANDERSON
United States Attorney

HUBERT I. TEITELBAUM
First Assistant U. S. Attorney

VI

OBJECTIONS TO MOTION TO CONSOLIDATE CASES FOR TRIAL

Now comes Nicholas A. Stirone, defendant herein, and objects to the motion filed by the Government for consolidation for trial of the above captioned matter with No. 14872 Criminal, United States of America vs. Nicholas A. Stirone, and No. 14873 Criminal, United States of America vs. Nicholas A. Stirone, for the following reasons:

1. That the defendant has been indicted in three separate indictments charging the following violations: (a) At No. 14871—a violation of the Hobbs Act, 18 U.S.C. Section 1951; (b) at No. 14873 Criminal—a violation of the Hobbs Act, 18 U.S.C. Section 1951; and (c) at No. 14774 Criminal—a violation of the Labor Management Relations Act, 29 U.S.C. Section 186.

2. That the offenses charged in said three indictments could not have been joined in a single indictment under Rule 8 of the Federal Rules of Criminal Procedure, for the reason that they are not "of the same or similar character" and are not "based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."

3. That, under Rule 13, the Court may not order said three indictments to be consolidated for trial, because the offenses charged therein could not have been joined in a single indictment or information.

4. That the offenses charged under the Hobbs Act (18 U.S.C. Section 1951) and the offense charged under the Labor Management Relations Act (29 U.S.C. Section 186) are not of the "same or similar character."

5. That even if the offenses charged in said indictment were considered as being of "the same or similar character", under the literal language of Rule 13, Federal Rules of Criminal Procedure read with Rule 8(a), Title 18 U.S.C., nevertheless the Government is not entitled to have said offenses consolidated for trial because the defendant would be prejudiced by such joinder of offenses for trial within the purview of Rule 14.

6. That a consolidation of said three indictments for trial would be prejudicial to the substantial rights of the defendant, would hamper and confound the defendant in making his defense, would confuse the jury in its determination of the issues involved in each of said three cases, and defendant would thereby be deprived of a fair and impartial trial in violation of the due process clause of the United States Constitution.

7. The defendant could not be fairly tried on all three indictments, or even two indictments in one trial. If it should eventuate that a jury finds insufficient evidence to convict on the indictment at No. 14871 Criminal, and on the indictment at No. 14872 Criminal—the alleged Hobbs Act violations—and is doubtful as to the indictment at No. 14873 Criminal—the alleged Labor-Management Relations Act violations—then there is danger that the evidence submitted to them on the indictments at No. 14871 Criminal, the indictment at No. 14872 Criminal may have unjustified weight in the jury's consideration of the indictment at No. 14873 Criminal. The evidence necessary for proof of extortion under 18 U.S.C. Section 1951 is not the same evidence as is necessary for proof of receipt and acceptance of money by a representative of employees under 29 U.S.C. Section 186. It, therefore would be prejudicial to the defendant to be tried on indictments so consolidated for trial.

8. That the defendant would be prejudiced by the consolidation for trial of said three indictments, because the jury would be confused by the multiplicity of charges and the defendant would be hampered and confounded in making his defense. The three indictments tried together would occupy three distinct periods of time. Evidence as to one offense would be irrelevant as to the other offenses, resulting in the confusion of the jury. In short, the defendant could not be fairly tried on all three or even two of said indictments in one trial.

/s/ CHARLES J. MARGIOTTI
/s/ ARTHUR D. GATZ, JR.
/s/ V. J. RICH
Attorneys for Nicholas A. Stirone

IN THE DISTRICT COURT OF
THE UNITED STATES FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA vs. NICHOLAS A. STIRONE	NO. 14871 CRIMINAL NO. 14872 CRIMINAL NO. 14873 CRIMINAL

VII

ORDER

AND NOW, this 4th day of January, 1957, after argument and upon due consideration, the motion of the United States for consolidation of the above cases is hereby denied.

/s/ Herbert P. Sorg, *D.J.*

VIII

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

IN OPEN COURT

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. Dorothy Flanagan.

Q. What is your position?

A. Compliance supervisor with the National Labor Relations Board.

Q. Where are you located?

A. In the Clark Building, Pittsburgh.

Q. Will you tell us what documents, what affidavits are required and filed with the National Labor Relations Board and by whom?

A. All labor organizations are required to file a listing of the union officers and other documents showing how they have distributed their financial and registration information to the members and non-Communist affidavits by the officers.

Q. Do I understand then that all labor organizations within the jurisdiction of the National Labor Relations Board file such documents?

A. If they wish to come in compliance with the Act, yes.

* * * * * * * *

Q. Now, during the period from 1947 to 1950, will you look at Government Exhibit 1 and tell me who was president of the Laborers' District Council?

A. Nicholas A. Stirone, president.
Q. Was he president for all the years?
A Yes.

BY THE COURT:

Q. That is president of the Laborers' District Council?
A. Laborers' District Council of Western Pennsylvania.

BY MR. TEITELBAUM:

Q. That's the Laborers' District Council of Western Pennsylvania, Hod Carriers—
A. Hod Carriers.

* * * * * * * *

Q. Did you also bring with you, Miss Flanagan, at my request, similar records for Local No. 1058 of the Hod Carriers, Building and Common Laborers' Union of America, International?
A. Yes, I have.

(N.L.R.B. records of Local No. 1058, 1947-1957 marked Government's Exhibit No. 2.)

Q. Are they the same type of record in reference to Local 1058 as the prior records were, as Exhibit 1 was?
A. They are the same.
Q. Again do you have the index cards?
A. I have the cards.
Q. What years do the index cards cover?
A. '47.
Q. '47 through what?
A. To the present time.

Q. Who is indicated as president of Local Union 1058 of the International Hod Carriers for each of those years?

A. Nicholas A. Stirone.

* * * * * * * *

THURMAN C. TEJAN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Your name is Thurman Tejan?

A. Yes, sir.

Q. Where are you from?

A. Pittsburgh, Pa.

Q. What is your employment?

A. I am the executive officer of the Constructors Association of Western Pennsylvania.

* * * * * * * *

Q. In the course of your duties as executive secretary, have you had dealings with a group known as the Heavy Engineering, Railroad Contracting and Highway Construction Council of the American Federation of Labor for Western Pennsylvania?

A. Yes, we refer to it usually as the Heavy Construction Council.

Q. That's called the Heavy Construction Council?

A. That is the short term.

Q. Then I will call it the Heavy Construction Council. What area does the Heavy Construction Council cover?

A. They also cover the 33 counties of Western Pennsylvania.

Q. For what unions do they act?

A. The unions in the Council?

Q. Yes.

A. The Laborers Union, the Operating Engineers Union, the Teamsters Union and the Carpenters are also a part of it.

BY THE COURT:

Q. That's laborers, teamsters, carpenters?

A. And operating engineers.

BY MR. TEITELBAUM:

Q. When you speak of Laborers Union, is that the official name of that the Hod Carriers, Building and Common Laborers Union?

A. The International Union. I will read it to you first out of our agreement.

Q. I think that would be good to read it.

A. International Hod Carriers, Building and Common Laborers Union of America.

Q. That's one of the unions. What is the official name of the other one?

A. The other is the International Union of Operating Engineers, United Brotherhood of Carpenters, and Joiners of America, and the International Brotherhood of Teamsters, Chauffeurs, Warehouse and Helpers of America.

THE COURT: Can we agree that these may be referred to for the purposes of this case as the Hod Carriers and Carpenters Union?

MR. TEITELBAUM: Fine.

THE COURT: And so forth. Is that satisfactory to you, Mr. Casey?

MR. CASEY: That's satisfactory to me. The carpenters, the engineers, the laborers and the teamsters, with some restriction there. I would have no objection to calling it restricted teamsters, something like that.

THE COURT: All right, we will call them restricted teamsters if you wish us to.

MR. TEITELBAUM: I will refer to them from here on in as restricted teamsters, Your Honor.

Q. So that this Council negotiates with you, is that correct, for the common laborers, the teamsters, the restricted teamsters, and the electrical workers?

A. No, carpenters and operating engineers.

Q. Carpenters and operating engineers. On behalf of those three groups, did you ever enter into an agreement with the Heavy Construction Council concerning wages, conditions of labor and so forth?

A. Yes, we have been doing that since about 1937.

Q. How often do you reach one of those agreements?

A. It depends upon whether it's a yearly agreement that we conclude or on occasion there have been two-year agreements. We apparently have one.

Q. But the agreements are for all four unions and all of the constructors?

A. That's right.

Q. The constructors cover the same 33 counties of Western Pennsylvania that you cover?

A. That's right.

Q. Who is the president of the Heavy Constructors Council?

A. The Heavy Construction Council president is Mr. Stirone.

Q. How long has Mr. Stirone been the president of the Heavy Constructors Council, from your records, of course?

A. To the best of my knowledge since its inception. I have been with the Association since 1948. He has been president since that time.

* * * * * * * *

Q. So you are the executive secretary, you sign it. You are one of the signators on that?

A. That's correct.

Q. So for the carpenters, they have their own offices, is that right?

A. Yes, president.

Q. Those matters are negotiated and trashed out with them and then they sign an agreement with them after negotiation and by bargaining?

A. Correct.

Q. Does that apply to the other ones involved wherein the wages are concerned?

A. Yes, this is signed by each union and also endorsed by the Council.

Q. But each individual union involved bargains and signs the agreement, then it's bargained for and signed by the Council generally?

A. Correct.

Q. Has that been your practice since 1947?

A. Yes, that has been the practice through the years.

Q. So to set me straight on it, all the persons who appear and this is the form made up from your original contract—

A. That's correct, yes.

Q. All the negotiations were carried on with the people who signed this in the respective crafts and the Association and the Council itself?

A. Yes, that's correct.

Q. Those negotiations during the course of these years sometime take months, is that right?

A. That's true.

Q. And those meetings are generally attended by all the interested parties?

A. Correct.

Q. Once this contract is signed, any one of these, and there is a dispute between any of your Association members and any of the unions involved, what are the mechanics of handling that?

A. The contractor generally refers the dispute to me and I take it up with the union involved in the dispute.

Q. Would you say that that was the general practice?

A. That is the general practice.

* * * * * * * *

WILLIAM C. BOWDEN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Q. What is your name?

A. William C. Bowden.

Q. Are you from Pittsburgh?

A. Yes, sir, Ross Township.

Q. What is your position?

A. Secretary of the Master Builders' Association of Western Pennsylvania.

Q. What is the Master Builders' Association of Western Pennsylvania?

A. The Master Builders' Association of Western Pennsylvania is comprised of some 36 general contractors engaged in commercial, industrial and institutional building and approximately 50 sub-contractors who are associate members. The general contractors are regular members.

Q. When you say "social members," do you have a clubhouse some place?

A. I said associate.

Q. Oh, I am sorry, I thought you said social. Associate members?

A. That's right.

Q. How long have you been secretary?

A. I was employed by the Master Builders' Association on February 1st, 1946 as assistant to the then secretary, Mr. Reed. Mr. Reed died in April of '48. I was then acting secretary. Shortly thereafter I was appointed secretary of the Association, I would say sometime since 1948.

Q. So in effect you have been with them since 1946?

A. That's right.

Q. You say they build commercial buildings. What do you mean by that, stores?

A. Commercial buildings, we refer to as general office buildings like the Alcoa Building, the Bell Telephone Company, the State Office Building. Industrial buildings are referred to as industrial plants, like the J & L plant.

Q. Or like the strip mill up at Allenport, that the Pittsburgh Steel put up?

A. Yes, that would be an industrial plant. Institutional buildings, of course, are schools and churches.

Q. You don't go into homes, is that right?

A. No, sir.

Q. You have a group of general contractors who are regular members of your Association?

A. That's right.

Q. Then you have sub-contractors who are associate members of that Association?

A. That's right.

Q. What area do you cover?

A. By charter of the Associate General Contractors of America, we cover 11 counties in Western Pennsylvania.

BY THE COURT:

Q. Eleven counties?

A. Eleven, right, sir.

BY MR. TEITELBAUM:

Q. Can you tell me what they are?

A. Yes, I can.

Q. That is not an insurmountable list.

A. They are Allegheny, Armstrong, Beaver, Butler, Washington, Westmoreland, Greene, Indiana, Jefferson, Fayette. Is that eleven?

Q. Is that what it is? Is that all of it?

A. That's the counties, yes, sir.

Q. What unions—first, what does your Association do?

A. We represent the interests of management in the construction industry in connection with the labor relations, public relations, apprentice training, accident prevention and in almost every phase that the Constructors Association does in connection with their members.

Q. Do you also meet with them to determine wages and working conditions and hours of labor?

A. Yes, sir.

Q. Do you have dealings with what we have been calling here as the Heavy Engineering Council?

A. No, sir.

Q. With what labor unions do you deal?

A. Laborers' District Council of Western Pennsylvania.

Q. Do you deal—

A. The Carpenters' District Council of Pittsburgh and vicinity, The Operating Engineers Union Local Unions 33 and the Cement Masons' local union.

THE COURT: I wonder if you'd keep your voice up a little bit.

A. The Operating Engineers' Union, the Cement Masons' Union, the Joint Council of Teamsters No. 40, the Pile Drivers' Union, and in conjunction with a group of large employers, we employ boilermakers. We also participate in negotiations with the Boilermakers' Union.

Q. Do you enter into separate agreements with each of these unions?

A. Yes, sir.

Q. In other words, there's no overall body that you deal with comprising various unions?

A. Not that specify wages and working conditions. Just the other week, we negotiated a contract with the Pittsburgh Building Trades Council which affected some 22 crafts, but that has nothing to do with wages.

Q. Now, you said that you dealt among others, with the Laborers' District Council. Will you tell the Court and jury just what the Laborers' District Council is?

A. The Laborers' District Council of Western Pennsylvania is comprised of a number of local unions of common laborers who are affiliated with the International Hod Carriers, Building and Common Laborers' Union of America. We do not bargain with the total number of unions in that Council. We bargain with the unions who are represented in the counties that I mentioned, so it would probably be about 10, 11 or 12 of the unions in that Council.

Q. Now, do you deal with individual unions or do you deal with the District Council?

A. We deal with a committee comprised of each of the 11 counties plus Mr. Stirone, who acts as spokesman.

Q. Mr. Stirone is the spokesman for representatives of the eleven counties in the Hod Carriers' Union?

A. That's right, in our committee negotiations.

Q. So when you sit down to determine wages you talk to Mr. Stirone, don't you, he is the spokesman?

A. I talk to the committee. Mr. Stirone talks to our committee. I talk to the Laborers' Committee. Mr. Stirone talks to our committee. When I am addressing my remarks to him during the course of negotiation, I am addressing them to the Laborers' Committee.

Q. In other words, they are all sitting there—

A. That's right.

Q. And you make your remarks?

A. That's right.

Q. Then if there's anything to be said back for the Laborers' Council, Mr. Stirone makes the remarks, is that right?

A. May I add so that the report is clear, that there is no restriction on the part of the contractor members on my committee or the employee members of Mr. Stirone's committee in having the right to voice their opinion at any time.

Q. Do they do it very often?

A. Yes, sir, they have.

Q. Members of your committee often get up and voice their opinion?

A. Yes, sir, much to my chagrin.

Q. Sometimes to Mr. Stirone's chagrin, does somebody get up and voice their opinion?

A. I can't testify as to what Mr. Stirone's feelings are in the matter.

Q. So he is the spokesman of the group?

A. In most of the cases, yes.

Q. He is the chairman of that or the head of that committee?

A. I would say yes.

* * * * * * *

Q. At that time?

A. That's right.

Q. That meeting is held in an office or directors' room or some suitable—that has accommodations for a large number of people?

A. In most cases the negotiation meetings are held in the Board of Directors' office, which is also part of my office in our Association offices. Where the space is not adequate to comfortably accommodate the group, the Master Builders' Association would make arrangements for a room in the hotel that is available for relatively large groups.

Q. Usually at those meetings the Board of Directors of your Association and yourself and the officers would attend those negotiating conferences, would they not?

A. In every case, they would be attended by members of our Labor Committee who are not necessarily in every case a director or an officer, but in most every case there is a majority of directors on the committee or officers.

Q. What about the Laborers' District Council?

A. The committee is in every case comprised of a representative of the particular union in the county covered by the contractor.

Q. These matters are all set forth before everyone and if there is an agreement then that assent is apparent to all concerned and you arrange for the signing of the contract embodying the agreements that you have reached in these conferences?

A. Embodying what we finally agreed to verbally we put down in writing and sign.

Q. On those occasions both from the District Council and from your organization they are free and do express their opinion as to the various matters involved?

A. Would you please repeat the question?

Q. I say, at those conferences, are the members of your organization who are present at the conferences and the members of the District Council free to express their opinions and give their arguments relating to various phases of the labor contract?

A. Yes, that's true. I believe I testified to that before.

Q. And they frequently do that on both sides?

A. Yes, sir.

Q. Now, if there were—I believe you mentioned some of these, I only got down as far as Butler County, you said I believe Allegheny, Armstrong, Beaver, Butler—is that the way—and then on through the eleven?

A. Washington, Westmoreland, Indiana, Greene, Mercer. I believe Mercer is in there.

Q. In any of those counties wherein there is an institutional job or an industrial plant or a commercial building, that's usually the province of your Association, is it not?

A. When the job is held by a member of our Association.

Q. Well, we will use one I am familiar with, Landau Brothers. They are builders of commercial properties generally?

A. For many years they have been.

Q. That firm is a member of your Association?

A: That's right.

Q. If they had a job say in Westmoreland County, in Jeannette, and during the course of the job there was any dispute between the craft involved and the employer, how would that dispute be resolved, the mechanics of it?

A. Well, if the dispute on a particular job were a jurisdictional work dispute, I would be notified by the employer immediately and I would make arrangements to contact the business agent of the particular union—furnishing the men to that job of all the unions who are contributing to that dispute. In some cases it might be two unions, some cases three and as high as four, but we would gather them all together and try to determine the facts and determine the rights of the individual union contesting for the work and see that our employer was placed in the best position possible to maintain the work without stoppage by any of the unions involved.

Q. Those matters would all be referred to you and carried on by further negotiations and conferences carried on by you in the regular course of your work?

A. That's right.

Q. And that would be done with the individual locals involved?

A. Yes, sir.

Q. In the territory the job was being progressed?

A. The reason I differentiate between that type of dispute and an ordinary grievance as a result of something wrong in connection with the working conditions is that there is national machinery outside of this contract which we agree in this contract to abide by, known as the National Joint Board for Settlement of Jurisdictional Disputes, of which John T. Dunlap is currently chairman of which the Building Trades Department of the American Federation of Labor and the Associated General Contractors of America, our parent organization, have accepted and are operating under and they prescribe certain rules and regulations which we stipulate that we will be governed by and follow and these local unions stipulate that they will be governed by and follow and we so designate that recognition in our contract.

If it were a dispute of another nature in regard to a claim by the Laborers' Union, for instance, that contractor, my contractor was violating his responsibilities under the contractor, then I would go to that labor union representative of the local unions supplying a man and find out what his people had to say about how they would be aggrieved and we would try together to see whether it was the responsibility of the employer whom I represent to make an adjustment or responsibility of his union people to make the adjustment in order to resolve the issue.

Q. And you'd resolve it with those local representatives?

A. Well, if you are referring to the Laborers' Union, for instance, I might tell you and I say this most sincerely that in the eleven years that I have been secretary of the Master Builders' Association or at least associated with them, we have never had a single jurisdictional dispute which created one hour's stoppage of work nor in the eleven years of negotiations where I have been president have we had a strike over our inability to consummate a successful contract.

Q. That's all, sir.

(agreements entered into, 1953-1958 between Master Builders' Association and Common Laborers' Union marked Government's Exhibit No. 4.)

Redirect Examination

BY MR. TEITELBAUM:

Q. I show you what has been marked Government's Exhibit 4 and ask you if those are the agreements entered into from the years '53 through '58 by yourself and the Common Laborers' Union?

A. Yes, sir. These are printed copies printed by our organization.

Q. Are these generally speaking the same type of agreements that have been entered in nearly since '46?

A. Yes.

MR. TEITELBAUM: If it please the Court, I offer in evidence Government's Exhibit No. 4.

THE COURT: Do you have any objection, Mr. Casey?

MR. CASEY: I have no objection.

THE COURT: Government's Exhibit No. 4 will be admitted into evidence.

Q. Do you know offhand whether either Duquesne Slag or Duquesne Sand or William G. Rider or the Rider Supply Company was ever an associate member of your Association?

A. I know neither one of them, at least in my experience, have ever been.

Q. I see.

A. There are other organizations available for that type of contractor.

Q. I just wanted to get that clear. Now, also you know that this Laborers' District Council that you are talking about, is that the same organization as the Heavy Engineering Council with whom Mr. Tejan works?

A. Absolutely not.

Q. It is a completely separate organization, different?

A. Positively.

Recross Examination

BY MR. CASEY:

Q. I noticed, Mr. Bowden, in Government's Exhibit 4, the names, for example this is the 1956-1958, that's the current laborers' agreement, is it not, that's the one that is in effect now?

A. That's right.

Q. On behalf of the Association, who signed that?

A. Paul C. Riffle, president; R. J. Mitchell of the Trimble Company, who is the chairman of our Labor Committee and Pasquale Navarro, who is a member of the Navarro Corporation, and myself.

Q. On behalf of the District Council, the Laborers' District Council of Western Pennsylvania, who signed it?

A. Nicholas A. Stirone, president; John Ward, secretary. John Ward is also a business agent of a local union here in Pittsburgh. I don't know the number right at the moment. Lonnie Wilson, who is a business agent of the McKeesport local; Clyde J. Yohe is the business agent of the Butler area local; Frank Costello, I believe is business agent of the Washington County area local; Milton Piper of 226 of Pittsburgh, Pa.; Gene E. Calabrese is a business agent of the local union up in New Castle; Lawrence Nease is a new business agent and I am not familiar with the county which he represents. Ben Brock is the business agent of Local Union No. 11 of Pittsburgh; Carl DiGennaro I believe I may have Calabrese and Carl DiGennaro mixed up. He is a business agent of one of the outlying counties. James J. Russo is business agent of Beaver County.

Q. So then in the course of the negotiations for this contract which is the last one in effect now, which is a part of Government's Exhibit No. 4, would you say that the men who signed this were all present at all or some part of the negotiations?

A. I would say that every one of them were present at all of the negotiations.

* * * * * * * *

AFTERNOON SESSION June 5, 1957
2:00 p.m.

JOSEPH V. MORESCHI, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. Joseph V. Moreschi.

Q. Where do you live?

A. In Winnetka, Illinois.

Q. What position or office do you hold?

A. I am the general president of the International Hod Carriers, Brotherhood of Common Laborers of America.

Q. Where is your office?

A. 81 15th Street, Northwest, Washington, D. C.

* * * * * * * *

EXAMINATION BY MR CASEY

Q. You have known Nick Stirone a long time, haven't you?

A. More than 30 years.

Q. He has been a good union man?

A. Very able fellow.

Q. And good for your union?

A. Very radical.

Q. That's all.

Redirect Examination

BY MR. TEITELBAUM:

Q. Mr. Moreschi, you said Mr. Stirone has been a good union man?

A. Yes, sir.

Q. If he had gone to a place on behalf of a private employer for a private salary to work out a deal for that private employer with another of your locals in some other place and gotten paid for it, would that be a good union man?

MR. CASEY: Just a moment. Objected to as argumentative.

MR. TEITELBAUM: I just asked a question.

MR. CASEY: I know you did. That's argument.

MR. TEITELBAUM: I just proposed a situation and asked him if that would be a good union man.

MR. CASEY: I object to it as argumentative.

MR. TEITELBAUM: He can answer even if it is.

THE COURT: It is argumentative.

MR. TEITELBAUM: Well, I don't mean to argue. I don't know the definition of a good union man. I just want to find out from an expert of 50 years whether or not if a union leader from Pittsburgh was hired by a private firm to go and negotiate on his behalf with another one of his locals, whether or not that would be a good union man.

MR. CASEY: If the Court please, in order not to have it argumentative, I respectfully suggest you just ask him what a good union man is. I would have no objection.

MR. TEITELBAUM: That's going to take a long time. I want to specify certain matters. If the Court feels that's argumentative, I'll withdraw it.

Q. What is a good union man?

A. A man who carries out his union duties as faithfully as possible.

Q. Can a union man also have private employment?

A. Outside of our calling?

Q. Yes.

A. If he did get private employment, he would lose his vote in our union but he'd maintain his other rights while he is an agent of a private employer.

Q. If he were in private employment, he would lose his right to vote in your union?

A. Yes, sir, if he was engaged for livelihood elsewhere, yes, sir.

Q. Can he on behalf of other firms - can he represent other people in their relation to your union?

A. There are labor relations men, who belong to all crafts, who represent the employers.

Q. Can they be a member of the union?

A. Yes, sir.

Q. A man can represent management and still be a member of your union?

A. As labor relation men, yes, sir. There are formen superintendents.

Q. I see.

A. While in that capacity they have no vote in the local, no voice or vote.

Q. Back in 194[illegible], did you have charges against Stirone personally?

A. No, sir, the local.

Q. Never any charges against Stirone?

A. No, sir.

Q. In 1944, did Mr. Stirone refuse to appear at your headquarters?

A. Not that I know.

Q. Did you order him to appear?

A. I don't recollect.

Q. You don't remember whether you did or not?

A. No. He never refused when I ever ordered him.

Q. Have you ever heard that he went up to Johnstown and took over a local union from Mr. Russell?

MR. CASEY: Objected to as hearsay.

MR. TEITELBAUM: Certainly it's hearsay, Your Honor. When a man says he is a good union man, he is talking about his reputation.

THE COURT: Objection overruled. Go ahead.

A. I had no knowledge he ever took over any local, because none of our representatives had such authority.

Q. Did you ever hear that a man by the name of Mr. Adams filed suit against him?

A. No, I did not hear that.

Q. To be reinstated in his local union?

A. No, I did not.

Q. Did you ever hear Mr. Adams made sworn charges in a state court up here that Mr. Stirone extorted money?

MR. CASEY: If the Court please, I object to the line of re-direct examination.

THE COURT: Sustained.

MR. TEITELBAUM: May we come to side bar?

(At side bar)

MR. TEITELBAUM: As I understand the law, when somebody puts his reputation in evidence as this man has now done by asking that question, was he a good union man, then I am not restricted to facts which can be proved because his reputation as a good union man would depend on more than that. If he had a reputation of having extorted money and it was public knowledge, public knowledge in the city, I just wonder if I can't ask him about that.

MR. CASEY: The issue here is whether he is an honest, law-abiding man, not a good union man. This man might have ideas of a good union man, strong-arm methods or doing anything in order to accomplish their ends, which has nothing to do with that.

MR. TEITELBAUM: Then I ought to find ou what he thinks a good union man is.

THE COURT: He has already testified h didn't know anything about these things. All h knew there was some kind of a suit filed. You hav gone far beyond that in your examination of him.

MR. TEITELBAUM: Oh yes. I wanted t know whether he knew he extorted money on th Liberty Tubes, if he knew he extorted money out her in the Airport. These were all public charges. think the International had ought to have know them.

MR. CASEY: Public charges, but they we resolved in favor of him.

MR. TEITELBAUM: But if the head of th International doesn't even know the charges we made, then he doesn't have any idea whether he w a good union man or not.

THE COURT: I have sustained the objectio I am going to stick to it.

(In open court)

Q. Do you keep a pretty close eye on what yo various people are doing around the country?

A. I try my best.

Q. You usually know what is going on?

A. We have a thousand locals in many areas. We do our best through our men. These regional offices are represented to keep fully.

Q. Now, you said Mr. Stirone was a good union man. I wonder what a good union man is. Would you say a man who uses strong arm methods is a good union man?

A. No.

MR. CASEY: Objected to as a leading question. He asked him what a good union man is and then he puts a question to him that suggests the answer.

MR. TEITELBAUM: I want to find the basis for the statement that he was a good union man.

MR. CASEY: Ask him that. I object to the line of questioning as being leading.

THE COURT: It is leading.

MR. TEITELBAUM: All right, sir.

Q. Do your rules and regulations when you have these conventions discuss the methods that are to be used in organizing unions and in negotiating wage disputes?

A. In the national convention?

Q. Yes.

A. They are mostly all local matters, regional or district states and so forth.

Q. You mean you don't discuss that nationally at all?

A. Every organization has their own autonomous right to enter a contract with the employer in their area.

Q. Do you discuss what are good union practices and what are bad union practices?

A. We generally try to educate them to the best knowledge possible to be cooperative and to assist in carrying out to protect their membership in the local.

Q. What do you tell them about things like strong arm methods and beating people up?

A. We don't

MR. CASEY: Objected to.

A. We don't

MR. CASEY: Just a moment.

A. We don't

MR. CASEY: Just a moment. Objected t

THE COURT: Objection overruled.

A. We don't instruct nobody, like any other citize we ask members and officers to be truly respectable to a laws, whether our union or our country.

Q. So you do give them those instructions not to us those kind of methods, is that right?

A. Yes, sir.

Q. You send these advisors what did you c them? Consultant

A. Consultant-conciliators.

Q. Consultant-conciliators. Do they go around a tell these men how to operate?

MR. CASEY: Just a moment. That's obje to as being purely hearsay.

THE COURT: Objection overruled.

A. We tell them to educate our organization and who work in our calling the best performance in order preserve and advance their welfare

Q. What do you tell them

A. All within the laws of our union and country.

Q. What do you tell them to do about strong a methods and stuff like that?

A. We don't tolerate such things.

Q. You don't approve of it?

A. No, sir.

MR. CASEY: If the Court please, this quest unimportant as it is, I move it be stricken from record as not responsive to the question.

THE COURT: Motion is denied, Mr. Ca

(In open court)

RICHARD C. WITT, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. What is your name?

A. Richard C. Witt.

Q. What is your occupation?

A. Currently I am a buyer for the Pittsburgh Steel Company.

Q. How long have you been with Pittsburgh Steel Company?

A. Since December 3rd, 1951.

Q. Did you receive a subpoena duces tecum from the Government to produce certain documents?

A. I did.

Q. Do you have those with you?

A. Yes, I do.

* * * * * * * *

Q. Are you telling us that you don't know or there was no other contract increasing the facilities there?

A. Not of the hot strip mill. We did build other mills at the same time.

Q. Did Ragnar Benson build those a little later?

A. I believe that they built one of them which was a separate contract, and had nothing to do with this.

Q. Had nothing to do with this?

A. Nothing to do with this.

Q. They continued to build while they were there.

A. Yes, sir.

Q. The next year or so. What was the nature of that building?

A. Was that a cold strip mill?

A. That was a cold strip mill.

Q. What was this one?

A. Hot strip mill.

Q. The original specifications were for the hot strip mill and then sometime later, Ragnar Benson got a contract for a cold strip mill in addition to this?

A. Yes, sir.

Q. And that for the cold strip mill would be other papers specifying a price and specifications relating to that cold strip mill?

A. Yes, sir.

Q. And the Government subpoenaed and asked you for those?

A. No, sir.

Q. Just for the hot strip mill?

A. Yes, sir.

* * * * * * * *

ROBERT ONG, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. What is your name?

A. Robert Ong.

Q. What is your occupation?

A. Purchasing agent for Ragnar Benson, Incorporated.

Q. How long have you worked for Ragnar Benson Incorporated?

A. Since January, 1948.

Q. Mr. Ong, did you receive a subpoena duces tecum for certain documents, from the Government?

A. Yes, I did.

Q. Do you have those documents with you?

A. I do.

(Original purchase order by Ragnar Benson to Rider Supply, and three revisions marked Government's Exhibit No. 10.)

Q. Could you tell us briefly what kind of work Ragnar Benson does?

A. We are general contractors with main offices in Chicago, Illinois and we have done commercial and industrial construction work within the United States over a period of the last 30, 35 years.

Q. Now, in 1951, do you of your own knowledge know whether or not Ragnar Benson, Incorporated, was the prime contractor in the construction of a hot strip mill for the Pittsburgh Steel Company at Allenport, Pa.?

A. Yes, we were.

Q. And do you know who supplied the ready mixed concrete for this hot strip mill being constructed at Allenport, Pa.?

A. It was supplied by the Rider Supply Company, North Charleroi, Pa.

Q. Now, Mr. Ong, I show you Government's Exhibit 10 marked for identification and ask you to tell me what this group is?

A. This is the original purchase order issued by Ragnar Benson, Incorporated, to Rider Supply Company; covering the purchase of ready-mixed concrete for the construction of the hot strip mill at Allenport for Pittsburg Steel Company and amended by three subsequent revisions at later dates, to increase the unit price paid for this concrete.

Q. Do you have photostatic copies, Mr. Ong?

A. Of those?

Q. Of the original purchase order there and the revisions?

A. No, just those.

MR. CASEY: Is Mr. Witt still here? Will you wait here a minute.

MR. TEITELBAUM: Your Honor, I move that Government's Exhibit No. 10, the purchase order of Ragnar Benson, Incorporated, to William Rider, Rider Supply Company, for the purchase of ready-mixed concrete for the hot strip mill at Allenport, Pa., be admitted into evidence.

THE COURT: Have you seen it, Mr. Casey?

MR. CASEY: Yes.

THE COURT: Do you have any objection?

MR. CASEY: I only object to the statement about the cold strip mill.

THE COURT: You what?

MR. CASEY: The papers of the exhibit also include contract and notations concerning the cold strip mill as well as the hot. With that understanding, I have no objection.

THE COURT: All right, the Exhibit No. 10 will be admitted.

Q. Now, I show you Government's Exhibit No. 10, Mr. Ong, and ask you J.K. 1446, is that correct—that is a serial number for what?

A. That is a serial number assigned for our own accounting purposes to designate the hot strip mill project.

Q. And that purchase order was for ready-mixed concrete, is that right?

A. That is correct.

Q. And on the basis of that purchase order was the ready-mixed concrete purchased from William Rider on JK 1446, was that ready-mixed concrete specifically for the hot strip mill?

A. Yes, it was.

Q. That's all I have.

Cross Examination

BY MR. CASEY:

Q. I notice on there, sir, in that exhibit, Charleroi

Supply Company, something pertaining to that. It's attached to the exhibit, the last page?

A. That is a quotation which we also received from one of Rider Supply Company's competitors at the time we were bidding the job and it's customary that we attach other quotations to the purchase order file.

Q. Before you got the job you went out and you got quotations from the various concrete suppliers in the territory, is that right?

A. That's correct.

Q. One of which was the Charleroi Supply Company?

A. That's right.

Q. Does your record show whether you got any from Rider Supply Company?

A. We do not have a written quotation from Rider Supply Company. To the best of my knowledge it was a verbal quotation made to our vice president, Mr. Kassab.

Q. Commonly known as Jake Kassab, is that it?

A. That's right.

Q. Is that all the papers that there is regarding this contract and all the formal papers?

A. These are the only formal papers existing between Ragnar Benson and Rider Supply Company in so far as the purchase of material is concerned.

Q. That's all, sir.

* * * * * * * *

JOSEPH A. PASUIT, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. Will you give us your name?

A. Joseph A. Pasuit.

Q. What is your occupation?

A. I work in the Navigation Branch of the Corps of Engineers, United States Army.

* * * * * * * * *

Q. Mr. Pasuit, I show you Government's Exhibit 11 and I show you Government's Exhibit 12. Now, can you tell me from Government's Exhibit 12, was the dredge boat "Admiral" of the Duquesne Sand Company dredging sand on the Ohio River during the year 1951?

A. Yes, sir.

Q. Can you tell me the location where the sand was being dredged by the boat "Admiral" in 1951?

A. Yes, sir.

Q. How can you tell me that?

A. Duquesne Sand Company submits reports where the "Admiral" is dredging and it gives the mileage and the bank, right bank, left bank and how many miles below Pittsburgh. We check the various points by checking our navigation chart.

Q. What bank was given as the location of the dredge boat "Admiral" during 1951?

A. 1951 it was dredging on Mile 51.3, left bank. That's near Cluster Island, West Virginia.

Q. Now, how can you tell it's near Cluster Island, West Virginia?

A. Cluster Island, West Virginia stands from Mile 51 and thence to about 52.5.

THE COURT: What is the name of that boat?

MR. PALETTA: The "Admiral."

Q. In what state was this portion of the river located?

A. West Virginia.

Q. Now, was the dredge boat "Admiral" dredging sand/at that same location all through '51?

A. All through '51.

Q. How about in '52 where was the dredge boat "Admiral" dredging sand?

A. In 52 it dredged in West Virginia and also Ohio.

Q. How do you know?

A. Well, the left bank of the Ohio River is West Virginia and the right bank is Ohio. They have been dredging on the right bank of the Ohio River and also on the left bank.

Q. Did they dredge in West Virginia all through '52?

A. Well, West Virginia and Ohio.

Q. Were they dredging sand in West Virginia and Ohio all through '52?

A. That's right, sir.

Q. How about 1953?

A. In 1953 they dredged also in West Virginia and Ohio.

Q. Is that the only place they dredged?

A. Yes, sir.

Q. That's all I have.

* * * * * * * *

GEORGE HERBERT KEISLING, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. What is your name?

A. George Herbert Keisling.

Q. What is your occupation?

A. Assistant controller of the Pittsburgh Steel Company.

Q. How long have you been with the Pittsburgh Steel Company?

A. Since November of 1926.

Q. Are you familiar with the Pittsburgh Steel plant at Allenport, Pennsylvania?

A. My duties are confined to the general office here in Pittsburgh and my acquaintance with the plant at Allenport is only on occasional visitation.

Q. What did you say your actual position was with the Pittsburgh Steel Company?

A. The maintenance of the financial and accounting records of the company.

Q. Now, in the course of your duties does that make you familiar with all the operations of the Pittsburgh Steel Company?

A. In a general way.

Q. In a general way. That would make you also familiar in a general way with the operations of the Pittsburgh Steel Company plant, is that correct, at Allenport?

A. Yes.

Q. Now, as a result of your familiarity with the financial dealings of this company, could you tell us what product is manufactured at the Allenport plant of the Pittsburgh Steel Company?

A. Well, we manufacture hot rolled sheet and strip, cold rolled sheet and strip and seamless tubing.

Q. In regard to the hot strip mill, specifically what is the product that is manufactured there?

A. Hot rolled sheet and strip.

Q. Now, can you tell us the purposes that these hot rolled sheet and strip are used?

MR. CASEY: That's objected to as immaterial.

MR. PALETTA: We are going to contend that it isn't, Your Honor. My next question, of course, will show that fact.

THE COURT: Objection overruled.

A. The product of the mill is used in the automotive and appliance industry. It's a flat rolled steel product

Q. Do you ship this product out of state?
A. Yes.
Q. What are some of the big points of distribution?

MR. CASEY: I'd like to have an objection to any question relating to the out of state shipments so far as Pittsburgh Steel is concerned.

THE COURT: Relating to what?

MR. CASEY: Any shipments out of state.

THE COURT: Why?

MR. CASEY: I think there's nothing material to this matter.

MR. PALETTA: It helps to show interstate commerce, Your Honor. Inter-state commerce sand coming in and products at the plant that was constructed going out.

MR. CASEY: It's immaterial as showing what Gulf transports on the river interstate.

MR. TEITELBAUM: The Act provides that any interference with commerce in any way and to any degree is an interference with commerce, and here was an operation they were building a plant, the products of which would be shipped in inter-state commerce. Therefore any interference with the building of that plant would be an interference with interstate commerce, just as the interference in numerous cases where the building of a ship line and unloading of freight cars in the building of a line, Congress interdicted any type of interference in any way or degree.

MR. CASEY: In those cases, truck cases, ship cases, it involves a transportation facility or the actual transportation itself such as the truck cases or cases of those type. Here we are to the point now where the only thing in this record is that Ragnar Benson is evidently a foreign corporation. I don't think that's clearly established. They say their head office is somewhere in Minnesota under the witness, and contracted to build a plant for Pittsburgh Steel at Allenport, a hot roll mill. That's as far as we go.

MR. TEITELBAUM: In United States vs. Masiello, 235 Fed. Second, 279, we had the manufacturer who distributed in interstate commerce. Any interference with that manufacturer was considered to be an interference with commerce. In the well-known Hulahan case, the victims, the extortees, were engaged in building a home development project and were dependent upon commerce for material supplies and equipment. They were also building a flour packaging and storage plant, which facilities were used—the storage plant used its facilities, they obtained grain and distributed products through interstate commerce. The victim, remember, was the firm who built the plant. That's the exact situation with Pittsburgh Steel.

MR. CASEY: If the Court will read that opinion, you will find out that was raised and the question was involved there because the lumber was coming from Texas and Georgia and on the West Coast and the material and men were being transported so that they didn't necessarily need to pass upon the flour mill proposition.

THE COURT: The question whether it is interstate commerce is a question for the Court, in any event.

MR. CASEY: I presume that's why Your Honor is hearing this evidence. That's the reason for my objection. I say that in the state of the record as it is now, the question as to Pittsburgh Steel being engaged in interstate commerce under the state of the record as it is here, that it's immaterial and irrelevant.

THE COURT: Your objection will be overruled.

Q. Would you list a few of the major points of distribution where these particular products from the hot strip mill were shipped?

A. Well, since it goes into the automotive industry, a major point would be the State of Michigan or Detroit generally and another point would be Louisville, Kentucky, where the appliance industry is.

Q. Do you know how it is shipped?

A. By rail generally.

Q. Generally by rail?

A. Or truck.

Q. Could you tell us some of the component raw materials which go into the making of these products in the hot strip mill?

A. The hot strip product itself is made from a slag which comes from our Monessen plant. The slabs, of course, the basic material—

MR. CASEY: Now if the Court please, in order not to be coming up here—

THE COURT: You have the right to make any objections you wish to make.

MR. CASEY: I'd like to have a continuing objection to any testimony of this witness relating to the interstate commerce phase of the plant, either of the materials coming in or the material going out.

THE COURT: It is understood that this testimony is under your objection.

Q. Would you continue?

A. The basic material, of course, in steel is iron ore.

Q. Where does this iron ore come from?

A. It comes from Minnesota and there's a small portion of it imported from South America.

Q. That's all I have. You may cross examine.

Cross Examination

BY MR. CASEY:

Q. Are you familiar with this situation in 1951 at the time the Ragnar Benson started to build the new hot roll mill or hot strip mill?

A. Yes, sir, I held my present position there.

Q. At that time the plant was operating, the Pittsburgh Steel Company, some witness said yesterday about six or eight miles away was another plant?

A. That's right, six or eight distance between the two plants.

Q. Is that where this ore and the seamless tube and the strip, steel strip for the auto industry did it also come from those plants?

A. No, the situation is this: That our basic steel making plant is at Monessen and that's where the iron ore is used to produce a slab.

Q. So what you are telling us that Pittsburgh Steel in its basic and main plant at Monessen, Pennsylvania, it is engaged in interstate commerce in that it sends this material out to Michigan and other places and it gets iron ore and other materials from Minnesota into that plant?

A. We have the same condition in our Allenport plant. They also ship material out in a like manner.

Q. With reference to the new hot mill at Allenport, that was a new venture, wasn't it?

A. Yes, it was.

Q. And that same thing applies to the new cold mill as of 1952, that was a new venture?

A. Yes, the new cold mill didn't go into operation, I believe, until 1954.

Q. Until 1954 it went in operation. What about the new hot mill, when did it go into operation?

A. In 1953.

Q. Do you know what time in 1953 it went into operation?

A. Early in 1953.

Q. Is there any way to specify?

A. I would say March.

Q. So up until that time at least any hot strip or hot sheet that came out of the mill, the first mill built by Ragnar Benson there, nothing went out of there at least until March of 1953.

A. Yes, we didn't have a hot rolled plant.

Q. As far as the other addition was concerned, the cold mill didn't get into operation until 1954 sometime?

A. Yes, sir.

Q. That's all.

Redirect Examination

BY MR. PALETTA:

Q. Mr. Keisling, if the plant had not been built by March of 1953, no products could have come in or gone out, is that correct? If you hadn't had a plant at Allenport, could you have shipped out products?

A. Well, we had basic steel, we had slabs and ingots for sale, which we were selling to the same industry.

Q. If you hadn't built a plant at Allenport, Pennsylvania, could you have made hot strips at Allenport, Pennsylvania?

A. No.

Q. Let me ask you one other question: What percentage of the product from the hot strip mill was shipped interstate, do you know?

A. About 80 per cent.

Q. That's all.

CLIFFORD H. CRAIN, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. Give us your name, please.

A. Clifford H. Crain.

Q. Mr. Crain, are you connected with the Duquesne Sand Company?

A. I am secretary-treasurer of the Duquesne Sand Company.

Q. And are you connected with Crain Brothers?

A. I am the president of Crain Brothers.

Q. Now, what is the business of Duquesne Sand Company?

A. Duquesne Sand Company owns a dredge and some barges. We dredge sand from the river, clean it and process it and transport it to Pittsburgh and for sale.

Q. Now, I first want to ask you about your functions and about the business of the Duquesne Sand Company. That is, did Duquesne Sand Company sell products to the Duquesne Slag Products Company from 1951 to the end of 1953?

MR. CASEY: Objected to as leading.

THE COURT: It is leading, Mr. Paletta.

Q. Was there any—can you tell us if there was any connection between Duquesne Sand Company and Duquesne Slag Company between the years 1951 and 1953?

MR. CASEY: Objected to as immaterial.

THE COURT: Objection overruled.

A. We have a working agreement with the slag company that they purchase all our output.

Q. That who purchases all your output?

A. Duquesne Slag.

Q. What is this output that they purchase all of it?

A. Sand and gravel.

Q. Now, do you have records which were subpoenaed by the Government pursuant to a subpoena duces tecum?

A. Yes, sir.

Q. May I have those records, please?

(Accounts receivable of Duquesne Sand 1951-1953, marked Government's Exhibit No. 13.)

(Vouchers backing up ledger sheets, accounts receivable, marked Government's Exhibit No. 14.)

(Pencil record showing payments for sand delivered by Duquesne Sand marked Government's Exhibit No. 15.)

(Record of location of barges owned by Crain Brothers and record showing location of barges owned by Duquesne Sand marked Government's Exhibit No. 16.)

(Record of barges delivered to Belle Vernon by Crain Brothers marked Government's Exhibit No. 17.)

Q. I show you Government's Exhibit No. 13 marked for identification and ask you to tell me what that is?

A. That's our accounts receivable of the Duquesne Sand Company for the years 1951 through 1953.

Q. Are these accounts receivable kept under your custody and control?

A. Yes, sir.

Q. I show you Government's Exhibit 14 marked for identification and ask you to tell me what that is?

A. These are the vouchers that back up the ledger sheets, accounts receivable.

MR. CASEY: Do I understand that to back up?

MR. PALETTA: Back up these ledger sheets.

Q. Those records, they represent, Mr. Crain, do those records represent '51 through '53, do they not?

A. That's right.

Q. '51 to '53.

MR. PALETTA: May it please the Court, I move that Government's Exhibit 13 marked for identification, accounts receivable ledger of Duquesne Sand Company, be admitted into evidence.

MR. CASEY: I would only ask the purpose of the offer.

MR. PALETTA: To show sales of sand from Duquesne Sand Company to Duquesne Slag Company.

MR. CASEY: I object to that and to the offer as being immaterial and irrelevant.

MR. PALETTA: Your Honor, we are going to have to show the sand was dredged by the "Admiral", transported by Crain Brothers for Duquesne Sand Company, sold by Duquesne Sand Company to Duquesne Slag, by which it was sold to Mr. Rider and Mr. Rider sold it to Ragnar Benson and Ragnar Benson used it in the concrete with which they built the Allenport plant. It's that chain of interstate commerce.

MR. CASEY: I didn't think you were introducing it as part of the chain.

MR. PALETTA: It's part of the chain, one link at a time.

MR. CASEY: I still object to this link.

THE COURT: You still object?

MR. CASEY: I certainly do.

THE COURT: Objection is overruled.

MR. PALETTA: I move Government's Exhibit 14, invoices of sales of Duquesne Sand Products to Duquesne Slag Products be admitted into evidence.

MR. CASEY: May I interpose the same objection?

THE COURT: They will be admitted.

Q. I show you Government's Exhibit 14, Mr. Crain, tell me now, would you check through there and tell me whether '51, '52 and '53 sales of Duquesne Sand Company to Duquesne Slag are represented therein?

A. Apparently they only have '53 here.

BY MR. CASEY:

Q. Apparently you only have '53, is that it?

A. Yes.

BY MR. PALETTA:

Q. Only one year, '53. Do you have the similar invoices for '51 and '52, Mr. Crain?

A. Yes, sir.

Q. Following the Court recess, will you obtain those for me, please?

A. Yes, sir.

Q. Now, I show you Government's Exhibit No. 13. Would you tell me what that is?

A. That is our accounts receivable for the Duquesne Sand Company for the years '51, '52 and '53.

Q. Now, does this show sales of sand to various customers?

A. It doesn't show it on this record. This shows the income, nothing else.

Q. Was this income that is shown on these records, what is this income for, what has Duquesne Sand Company done to warrant this income coming into Duquesne Slag Company?

A. About 95 per cent of the income of the sand company is sale of sand and gravel.

Q. Were these records prepared under your direction and control?

A. Yes, sir.

Q. So would you say a majority of the income shown there is for sales of sand by Duquesne Sand to Duquesne Slag Company?

A. I'd say 95 per cent is sale of sand and gravel.

Q. Now, I show you Government's Exhibit 14, invoices for 1953 of Duquesne Slag Company. Now, will you look at Government's Exhibit 13 and in conjunction with Government's Exhibit 14, tell me whether or not there were sales of sand in the year 1953 from Duquesne Sand Company to Duquesne Slag Company giving the date on the ledger sheets and match them up with invoices showing the actual sale of sand? Would you further tell me the name of the dredge that the invoice shows dredged that sand that they sold?

A. On the ledger, on November 19th it shows income from the Duquesne Slag Products Company.

BY MR. CASEY:

Q. What year is that?

A. '53, and here we have the vouchers to substantiate that.

BY MR. PALETTA:

Q. All right now, what was the amount of the income for that sale?

A. This particular one was $480.60.

Q. What was the thing that was sold by Duquesne Sand to Duquesne Slag?

A. On that particular one it was gravel delivered to Brady Street from our dredge "Admiral."

MR. CASEY: Well now, it's apparent that there's no gravel involved in this matter.

MR. PALETTA: That's right.

MR. CASEY: I'll withdraw that, I will not object.

MR. PALETTA: Mr. Casey, we have a lot of invoices there so we'll just keep going through. We'll find some sand.

MR. CASEY: I think it's like that stew, rabbit, one horse and one rabbit, 50-50 stew.

Q. Mr. Crain, if there is no sand shown on that particular invoice, would you start with January, '53, and pull out the invoices that show sale of sand, please, and continue pulling maybe two or three for each month.

A. Well, on November the 30th of the same month, we have a whole list of sand barges.

Q. A whole list of sand barges. Now, what was the amount of the sale on this particular invoice?

A. That was $14,293.01.

Q. And did this $14,000 represent a sale of sand from Duquesne Sand to Duquesne Slag?

A. Yes, sir.

Q. Where does the invoice strike that question. What is the name of the dredge boat that dredged the sand that the invoice shows was sold?

A. Dredge "Admiral."

Q. Let me ask you this question at this time: During the years '51, '52 and '53, Mr. Crain, did Duquesne Sand Company own more than one sand dredge boat?

A. No, sir.

Q. Did you only own one sand dredge boat?

A. Yes, sir.

Q. What was the name of that boat?

A. "Admiral."

Q. Now, would you start from the beginning, in January perhaps, and pick out one or two and just sort of run through the year, one each month for the twelve months of the year? Could you do that without much trouble, showing sales of sand, giving the name of the dredge boat that the sand came from?

A. In January, we weren't in operation.

Q. All right, then go into February.

A. Well, in March we delivered sand to Brady Street from the dredge "Admiral."

MR. CASEY: Mr. Paletta, I take it we are idle in February too?

A. Yes, sir. We operated each month the rest of the year, each month we delivered sand.

Q. You did deliver sand each month the rest of the year?

A. Yes, sir.

Q. Sand was delivered to the Duquesne Slag Products Company?

A. Yes, sir.

Q. And each month, did that sand come from the dredge "Admiral," according to the invoice?

A. Yes, sir.

BY THE COURT:

Q. As I understand, that's each month excepting January and February, is that correct?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. That is for the year 1953?

A. Yes, sir.

BY MR. PALETTA:

Q. Mr. Crain, I show you Government's Exhibit 15 marked for identification. Would you please tell the Court what that is?

A. This is a record, a pencil record that my bookkeeper keeps to show that we are paid for each barge of sand that we deliver.

Q. Does that give the number of the barge, the actual barge number?

A. Yes, sir.

Q. I show you Government's Exhibit 16 marked for identification and ask you to tell me what that is?

A. Well, there's two records here. One is the record of the location of the barges that's owned by Crain Brothers and the other one is a record that shows the location of the barges owned by the Duquesne Sand Company.

Q. Does it show the movement—well, I don't want to ask any questions about it. I show you Government's Exhibit No. 17 marked for identification and ask you to tell me what that is?

A. This is a record of barges that were delivered to Belle Vernon by Crain Brothers.

MR. PALETTA: May it please the Court, I move that Government's Exhibit 15, a record of barges of Duquesne Sand Company, be admitted into evidence.

THE COURT: Have you seen this record?

MR. CASEY: Yes, I just saw it.

THE COURT: Do you have any objection?

MR. CASEY: I have the same objection, presuming it's being offered for the same purpose, as the same link or another link in the chain of interstate commerce. I make the same objection.

MR. PALETTA: Your Honor, I think it's a link.

THE COURT: Objection overruled. Exhibit 15 will be admitted.

MR. PALETTA: I move that Government's Exhibit 16, marked for identification, a record of movement of barges of Duquesne Sand Company, be admitted into evidence.

THE COURT: Exhibit 16 will be admitted.

MR. CASEY: I have my same objection to that.

THE COURT: Objection overruled.

MR. PALETTA: I move that Government's Exhibit 17, a summary of barge movement to Belle Vernon of Crain Brothers and Duquesne Sand Company be admitted into evidence.

MR. CASEY: The objection as to Exhibit 16 will cover that.

THE COURT: Objection overruled and Exhibit 17 will be admitted.

Q. Now, I show you Government's Exhibit 15, Mr. Crain, and tell me, what is the function of this book?

A. The clerk keeps this record. When we invoice the customer, you can see he draws a circle around the number of the barge. That shows it's been invoiced and we will be paid for it.

Q. Does this record here show barges delivered to the Duquesne Slag Company by Duquesne Company and Crain Brothers for the years '51, '52 and '53?

A. Yes, sir.

Q. Would you turn to that particular section? Does this show barges which went to the Belle Vernon plant of Duquesne Slag Company?

A. Yes, sir.

Q. Could you read the numbers of some of the barges and the dates from that record that went to the Duquesne Slag Company at Belle Vernon?

A. Well, here's November, 1953, it shows digger to Brady Street to Belle Vernon. It shows Barge 205, 206, 211, 214, 215, 66, 326, 2, 442, and 207.

Q. Mr. Crain, I am going to give you Government's Exhibits 15, 16 and 17. I am going to ask you if you can pick out barges by number and show the movement of those barges from the dredge "Admiral" to Belle Vernon on about one day for each month during those three years or at least pick out about three per year. Then we will see if we need more.

MR. CASEY: Pick out January and February of '53.

MR. PALETTA: We might not be able to pick those.

Q. Can you pick January and February? If not, go into March and April?

A. We might have delivered a barge in those months, although we weren't digging sand.

Q. That's a good idea. Do check January and February of 1953. Let's see if you did deliver any barges and tell me where the barge came from.

A. In January, 1953 apparently we didn't have many movements.

Q. Is there no movement at all?

A. Yes, there's some movements but it's not—might have been sand or gravel. Barge 112, barge 112 was in the slag trade.

Q. Is that the only barge that moved in that month?

A. No, there was some other movement but they were slag.

Q. How about February, 1953?

A. In February in 1953 a barge 212 was loaded with sand, it was taken to Belle Vernon.

Q. Where was it loaded with sand?

A. It was stored at Leetsdale apparently.

Q. Where is that?

A. That's a landing we have at Leetsdale.

Q. What state?

A. That's in Pennsylvania.

Q. How did the sand get to Leetsdale, does it show?

A. 212. I will go back in January. That barge was brought to Leetsdale in December, 1952.

Q. From where?

A. From our dredge "Admiral."

Q. From your dredge "Admiral." Can you tell from that where your dredge "Admiral" was?

A. No, sir.

Q. All right, let's start chronologically. Let's go to January, let's go to October of '51. I will follow you on my Government Exhibit 15.

A. There's a whole lot of barges here.

Q. Just pick out one with sand. Are you familiar with the numbers? Tell me, can you tell me from looking at a number whether it was a slag or sand barge?

A. Usually, yes.

Q. Let's see you be a genius enough to pick out your sand barges?

A. The only barge 202 in October, it showed at the digger on the 1st of October. Our "Steel City" picked it up and brought it to Brady Street.

Q. Now, when you use the word "digger", stop for a minute. You said that the barge picked it up from your digger. Always give the name of the digger.

A. Dredge "Admiral."

Q. All right, then what happened, it was picked up from the digger "Admiral" and then what happened?

A. Our motor vessel "Steel City" picked it up and delivered it to Brady Street.

Q. What happened to it from Brady Street?

A. The "Steel City" returned it to the digger on the 5th.

MR. CASEY: May I ask a question?

MR. PALETTA: Sure.

BY MR. CASEY:

Q. Returned it empty?

A. Yes, sir. Then it made the cycle twice again that same month. Barges 201, 202, 203, clear on down the line were in the sand trade that month.

MR. PALETTA:

Q. All right now, let's go to November. Can you pick up Barge 207? November of '51.

A. Yes, sir.

Q. Did Barge 207 pick up sand from the dredge "Admiral"?

A. Yes, sir.

Q. What happened to that sand?

A. Well, that was delivered, our motor vessel "Hoopes" delivered that to Belle Vernon on the 12th of the month.

Q. To whom was that delivered at Belle Vernon?

A. I don't know. The Duquesne Slag dock at Belle Vernon?

Q. To the Duquesne Slag dock at Belle Vernon?

A. That's the way we determine it.

Q. How about Barge 208 on November 21, 1951. Could you trace that history?

MR. CASEY: What was the number of that?

MR. PALETTA: Barge 208.

A. Barge 208 was delivered by the motor vessel "John J. Hoopes."

Q. Where was it picked up?

A. That was picked up at Brady Street.

Q. Just a second, let me coordinate one more record.

A. And it was brought to Brady Street from our dredge "Admiral."

Q. Didn't Barge 208 go from the digger to Belle Vernon, November 21st?

A. It stopped at Brady Street. We delivered it to Brady Street. Then Duquesne Slag Company take it to Belle Vernon.

Q. So the ultimate destination was Belle Vernon, isn't that correct?

A. Yes, sir.

Q. Now, let's go to December of 1951. Let's pick up Barge 207 again. In December of '51, would you give the history of that barge?

A. On the first day the barge records show the barge in movement in the tow of our motor vessel "Steel City."

Q. Wait, before it started moving, what did it do, did it pick up sand?

A. I have to look in November to see that. It shows that it loaded the sand.

Q. From what?

A. Well, this November record, December record, this first day just shows it didn't move.

Q. Go to the November record and tell me what it was loaded with and from what?

A. On the last day of November, it was loaded with sand at our dredge "Admiral."

Q. Now trace its history through.

A. On the 1st of December it was in the tow of "Steel City," on the 2nd, it arrived at Brady Street; on the 3rd, "Steel City" took it back to the digger, arrived there on the 4th, Dredge "Admiral."

Q. Wait a minute.

BY MR. CASEY:

Q. Does that same thing apply to the fact the digger loaded there empty?

A. It went back empty.

BY MR. PALETTA:

Q. Just a second. Didn't Barge 207 on December 28th, wasn't that brought to Belle Vernon?

A. On December 28th—On December 28th our motor vessel "Hoopes" put the barge into Belle Vernon.

Q. That's right, and then it went back empty, isn't that correct?

A. Well, previous to that in the month of December, it made four or five trips to the digger.

BY MR. CASEY:

Q. I got lost on one of those trips some place. We are back now to December 28th, is that right? You are talking about December 1st?

A. On December 1st the barge was on its way up from our dredge "Admiral" and before the December 28th, it had been loaded and emptied several times.

* * * * * *

Q. Now, to how many customers did the Duquesne Sand Company sell sand during the years '51, '52 and '53?

A. The only customer we ever sold any sand to is Duquesne Slag at all times.

Q. Did Duquesne Slag purchase your whole output of sand then?

A. They have ever since the sand company was organized.

Q. Is there any inter-connecting ownership between Duquesne Sand Company and Duquesne Slag Company?

A. Duquesne Slag Company owns stock in the Duquesne Sand Company.

Q. In what percentage?

A. They own 49 per cent.

Q. Is Crain Brothers in any way connected with Duquesne Sand or Duquesne Slag?

A. Crain Brothers own 51 per cent of the Duquesne Sand Company. We have no connections with the slag company.

* * * * * * * *

CHARLES D. MYERS, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. PALETTA:

Q. Would you give your full name?

A. Charles D. Myers.

Q. What is your occupation?

A. Secretary-treasurer of Duquesne Slag products Company.

Q. How long have you been with the Duquesne Slag Products Company?

A. Since 1950.

Q. Did Duquesne Slag Products Company during the years 1951, '52, '53 sell sand to William Rider of Rider Supply Company?

A. Yes, sir.

Q. From whom did you purchase the sand that you sold to the Rider Supply Company?

MR. CASEY: If the Court please, I object to any testimony of this witness relating to sales of sand to William Rider or any other person on grounds of immateriality and non-relevancy.

MR. PALETTA: We are forging the next link in the chain. Of course, it's relevant to show the dredge "Admiral" dredged it, Crain Brothers transported it, Duquesne sold it to Duquesne Slag. Now Duquesne Slag is going to sell it to Mr. Rider, Mr. Rider is going to put it into concrete and sell it to Ragnar Benson, Benson is going to build the plant, the plant is going to manufacture steel bands, and the steel bands go to Detroit.

MR. CASEY: I say this is the same thing if this is a link in the chain. It probably came from Chicago. I defy Mr. Paletta or anyone to tell me it's still in interstate commerce. That's precisely my objection. It's come to rest some place. I object to it that it's immaterial in this issue.

MR. TEITELBAUM: That's the same issue, Your Honor, raised by Willie Bioff on the movie proposition.

MR. CASEY: This is Vincent Casey raises this one.

MR. TEITELBAUM: The Court answered it where films were sent to an exhibitor, to a distributor in an area and from the distributor they were sent out to the local movies for exhibition and Willie Bioff extorted money from a local theatre owner and he said oh, interstate commerce stopped when it got to the distributor, and the Court says yes, it wouldn't have gotten to the distributor if nobody was able was going to be able to exhibit it, if you interfere with the exhibitor, you are interfering indirectly then with the distribution to that distributor and the Congress has decided that any interference in any way is a violation of this Act. There might be a different ruling as to the National Labor Relations Act or the Wage and Hour Act, but as far as this Act is concerned, they said any interference in any way—

MR. CASEY: That's a very fine speech. All I ask is that my objection based upon—

THE COURT: Objection overruled.

Q. Would you answer the question? Did you sell sand to the Rider Supply Company?

A. Yes.

Q. I didn't hear your answer. I am sure the jury didn't.

A. During the years 1951 to 1953, yes.

Q. You sold that sand and from whom did you purchase that sand that you sold to the Rider Supply Company?

A. That's a question that is quite difficult to answer, but we purchase sand from Duquesne Sand and also purchase from other suppliers.

Q. All right, let's break that down. What percentage of the sand that you sold did you purchase from Duquesne Sand Company?

A. Would you repeat that question again also?

Q. (question read.)

A. Sold to who?

Q. To all your customers?

A. I would say better than 90 per cent was purchased from Duquesne Sand Company.

Q. And the remaining 8 per cent or so was purchased from whom?

MR. CASEY: What do you mean? I thought he said 90 per cent.

Q. All right, you purchased over 90 per cent, you say, from the Duquesne Sand Company. From whom did you purchase the remainder of your sand?

A. We also purchase sand from Shippingport Sand and Gravel Company, located at Shippingport, Pennsylvania. That sand is dug from the ground, not from the river. We also purchase sand from other suppliers, Iron City Sand and Gravel, which more or less is a minority quantity.

Q. Can you state how the sand that you sold to Mr. Rider of Rider Supply Company was delivered by you to him?

MR. CASEY: When?

Q. During the year '51, '52 and '53?

A. That material was delivered in most instances by barge from our Brady Street yard.

Q. Do you know the company that owned the barges? Whose barges were they that sold this, that transported this sand that you sold to Rider Supply at Belle Vernon?

A. A barge is a number to me. I don't know who owned those barges. I presume it is—

Q. Fine, we will get into some of the numbers here.

MR. PALETTA: I might say, Your Honor, I plan at this time to have the various exhibits marked and identified. If the Court wishes to do this at this time or at recess, all the various documents.

THE COURT: It's going to be a much better record if you will have your exhibits marked before you use them.

(Agreement dated August 6, 1951 between Duquesne Slag Products Company and Rider Supply Company marked Government's Exhibit No. 18.)

(Ledger sheets, Duquesne Slag Products Company record, accounts payable to Duquesne Sand Company marked Government's Exhibit No. 19.)

MR. CASEY: If the Court please, at this point, it is the position of the defendant that the interstate commerce in this matter ceased when the Duquesne Slag Products Company took possession and title and assumed the responsibility for this sand involved, and I therefore object to any—

THE COURT: Do you have any authority for that position, Mr. Casey?

MR. CASEY: I haven't, not at the present time. That's my position as far as this standpoint, is that interstate commerce ceased and as far as this sand is concerned, under the proof thus far, it is not involved in the indictment being tried here. I'd like a continuing objection to the testimony of this witness relating to any sand that was sold to Mr. Rider.

THE COURT: The objection is overruled and it will be with the understanding that this testimony is subject to your objection.

(Duquesne Slag Products Company's copies of Crain Brothers' files of towing charges, for years 1951, 1952 and 1953 marked Government's Exhibit No. 20.)

(Invoices from Duquesne Sand in vouchers for years 1951, 1952 and 1953, involving charges in delivery of material to Rider Supply Company marked Government's Exhibit No. 21.)

MR. CASEY: This isn't a private conversation, is it, Mr. Paletta?

MR. PALETTA: I am asking—

MR. CASEY: If the Court please, I can watch one of them at a time. I can't watch both of them.

THE COURT: Wait a minute.

MR. CASEY: I am objecting—

THE COURT: Whatever you have to say, go ahead and say it.

MR. CASEY: I am objecting to the side remarks on Mr. Teitelbaum's part, when I am addressing my remarks to the trial lawyer, Mr. Paletta. He is making side remarks here to me and I am addressing them some place else. I can't be watching him.

THE COURT: Mr. Teitelbaum, suppose you wait. If you have anything to say to Mr. Casey you wait until he finishes his remarks to Mr. Paletta. Let's have no more of this nonsense. Get on with the trial of the case.

MR. CASEY: You mean nonsense, — If the Court please, I addressed, I asked Mr Paletta, he was having a private conversation—

THE COURT: I have instructed them what to do. They are not to speak to you when you are addressing Mr. Paletta. You are absolutely right.

You shouldn't be annoyed by somebody else saying something to you.

(Accounts receivable ledger cards, Duquesne Slag Products Company against Rider Supply Company for years '51 to '54 inclusive marked Government's Exhibit No 22.)

(Copies of Duquesne Slag Products Company invoices against Rider Supply Company for years '51, '52 and '53 marked Government's Exhibit No. 23.)

Q. During the break I asked you in private, how did Shippingport Sand Company deliver the sand that they sold to Duquesne Slag Company? What was your answer to that question?

A. By barge.

Q. Where was this sand delivered that the barges delivered from Shippingport Sand Company to Duquesne Slag Company?

A. That could be to any of our customers including [illegible] Street yard.

Q. I show you Government's Exhibit 18 marked for identification and ask you to tell me what that is?

A. Photostat copy of an agreement dated August 6, 1951, between Duquesne Slag Products Company and Rider Supply Company.

Q. I show you Government's Exhibit 19 marked for identification and ask you to tell me what that is?

A. It's Duquesne Slag Products Company record, accounts payable record to Duquesne Sand Company.

Q. I show you Government's Exhibit No. 20 and ask you to tell me what that is?

A. Duquesne Slag Products Company's copies of Crain Brothers files of mostly towing charges for the year '51, '52 and '53.

Q. I show you Government's Exhibit 21 marked for identification and ask you to tell me what that is?

A. These represent invoices from Duquesne Sand Company in vouchers for the years '51, '52 and '53 involving charges in delivery of material to Rider Supply Company.

Q. I show you Government's Exhibit 22 marked for identification and ask you to tell me what that is?

A. Duquesne Slag Products Company, accounts receivable ledger cards against Rider Supply Company for the years '51 to '54 inclusive.

BY MR. CASEY:

Q. Do I understand that those are Duquesne Slag's cards?

A. That's right, accounts receivable cards.

BY MR. PALETTA:

Q. I show you Government's Exhibit 23 marked for identification and ask you to tell me what that is?

A. These are copies of Duquesne Slag Products Company's invoices against Rider Supply Company for the years '51, '52 and '53.

THE COURT: Mr. Paletta and Mr. Casey, since there are quite a number of exhibits there, we will adjourn for lunch at this time, and those exhibits can be examined before two o'clock.

(At this time, a recess was taken until 2:00 p.m.)

AFTERNOON SESSION 2:00 p.m.

CHARLES D. MYERS resumed the stand.

MR. PALETTA: Your Honor, I have Government's Exhibit 18 marked for identification. It's a contract between Duquesne Slag Products Company and the Rider Supply Company. What it is is actually a photostatic copy of the original and I have shown it to Mr. Casey and assured him that it is a copy of the original and he has no objection to it going in. He will allow it to go in and he won't require us to produce the original so I move Government's Exhibit 18 for identification be admitted into evidence.

THE COURT: Has it been identified?

MR. PALETTA: Yes, Your Honor.

MR. CASEY: No objection.

THE COURT: Exhibit No. 18 will be admitted.

MR. PALETTA: I move that Government's Exhibit 19 marked for identification, accounts payable of the Duquesne Slag Products Company, ledger cards, be admitted into evidence.

THE COURT: Have you seen that, Mr. Casey?

MR. CASEY: Yes, I saw them during the recess.

THE COURT: All right, Exhibit 19 will be admitted.

MR. PALETTA: I move that Government's Exhibit 20 marked for identification, invoices showing —would that be payments to Crain Brothers, Mr. Myers?

A. That's right.

MR. PALETTA: — invoice showing payment to Crain Brothers to be admitted into evidence.

THE COURT: Exhibit No. 20 will be admitted.

MR. PALETTA: I move that Government's Exhibit 21 marked for identification, accounts payable vouchers of Duquesne Slag Products Company and documents attached thereto be admitted into evidence.

THE COURT: Exhibit No. 21 will be admitted.

MR. CASEY: Just one moment, please. Is that Duquesne Slag Company or Duquesne Sand Company?

MR. PALETTA: These are the accounts payable vouchers of Duquesne Slag Products. However, the vendor is Duquesne Sand. In other words, this is what they owe Duquesne Sand Company, the bills that they owe.

I move that Government's Exhibit 21 for identification be admitted.

THE COURT: Exhibit 21 will be admitted.

Direct Examination (Cont'd)

BY MR. PALETTA:

Q. Mr. Myers, did you say that these are the originals of the pink copies which were admitted into evidence through Clifford Craine, invoices which Mr. Crain had? They are in evidence as Government's Exhibit 14. These are the originals, actually, of Government's Exhibit 14.

MR. PALETTA: I move that Government's Exhibit 22, accounts receivable ledger cards of Duquesne Slag Products Company be admitted into evidence.

THE COURT: Exhibit 22 will be admitted.

MR. PALETTA: I move that Government's Exhibit 23 marked for identification, invoices, Rider Supply Company invoices, be admitted into evidence.

THE COURT: Exhibit 23 will be admitted.

Q. Mr. Myers, I show you Government's Exhibit 18 and ask you on the basis of that document, can you tell me that was the provision between Duquesne Slag Products Company and Rider Supply Company concerning Rider Supply Company's requirements on purchase of sand?

A. Paragraph 8, page 7 reads: "It is understood that Duquesne expects to procure any river sand hereinunder from either Duquesne Sand Company and or Shippingport Sand and Gravel Company only and that delivery will be made to Rider in barges. Duquesne shall be under no liability whatever to Rider for any failure to fill any order for river sand or for any delay in delivery thereof, if such failure or delay is due to inability to procure delivery of sufficient river sand by barge from either Duquesne Sand Company and or Shippingport Sand and Gravel Company or to Acts of God, acts of

Rider, fires, floods, high water, acts of civil or military authority, strikes, storms, accidents, wrecks, shut-downs or any cause beyond Duquesne's reasonable control."

Q. Thank you, Mr. Myers. Now I show you Government's Exhibit 19, the accounts payable ledger cards of your company. Would you just exactly tell me what are these cards, what is their function in the bookkeeping system of your company?

A. When invoices are received from vendors, they are charged to an inventory account and credited to accounts payable. These cards represent accounts payable ledger cards, a credit balance represents the payable and the charge represents the payment of this payable.

Q. Now, what Government exhibit in evidence is the invoice which this card represents? Would that be Government's Exhibit 21 here?

A. Yes, that's right, Government's Exhibit 21.

Q. Do these ledger cards, Government's Exhibit 19, show all purchases from Duquesne Sand Company during the years '51, '52 and '53 regarding sand?

A. I will qualify that by saying all sand purchased and sold to Rider Supply Company.

Q. I see. In other words, these ledger cards only represent sand purchased from Duquesne Sand and sold to Rider Supply Company?

MR. CASEY: He didn't say that.

A. No, no.

Q. Repeat that again. I didn't understand you then.

A. These vouchers that I have in my possession—

Q. I am asking you about the ledger cards, not the vouchers, Government's Exhibit 19?

A. Government Exhibit 19 shows complete purchases from Duquesne Sand Company.

Q. The voucher?

A. The vouchers substantiating these credits only for sand purchased from Duquesne Sand Company and sold to Rider. In other words, these are not all vouchers for all sand purchased from Duquesne Sand.

Q. Now, I show you Government's Exhibit 21 and you say that am I correct in saying that Government's Exhibit 21, the vouchers back up what is on the ledger cards?

A. In part.

Q. In part.

A. That's right.

Q. Now, do these vouchers show the method of delivery of sand by Duquesne Slag Products Company to Rider Supply Company?

A. They do, yes.

Q. Now, would you tell us what the method of delivery was?

A. By barge

Q. Would you explain to this Court and jury how these vouchers show the delivery was by barge?

A. Taking a voucher at random, invoice dated September 12th of Duquesne Sand Company lists—

MR. CASEY: The year.

Q. The year, please?

A. September 12, 1952, lists five barges delivered to Duquesne Slag Products Company, Brady Street yard, from dredge "Admiral". Two of these barges are reconsigned as noted on the invoice to Rider Supply Company.

Q. To Rider Supply Company?

A. That's correct.

Q. Now is the actual number of the barge reconsigned to Rider Supply Company given on that voucher?

A. Yes, it is.

Q. Would you just read those two barge numbers?

A. Barge No. D.S. 212, Barge No. 436.

Q. Without the necessity of going through all these vouchers, do these vouchers right here represent the years '51, '52 and '53?

A. That's correct.

Q. For all years '51, '52 and '53, do these vouchers show barge numbers, said barges containing sand from the dredge "Admiral" and said barge being purchased by Duquesne Slag for consignment to Rider Supply Company?

A. That's correct.

Q. Now, Mr. Myers, I think that is sufficient on that point. I show you Government's Exhibit 22. Would you tell me what that exhibit is and explain its function?

A. Exhibit 22 shows detailed charges against Rider Supply Company for purchases by Rider Supply Company, also credits which include allowances or cash received.

Q. Would Government's Exhibit 23 which I show you here, invoices of Rider Supply Company, would these sales which are shown on these invoices also be noted on these ledger cards?

A. That is correct.

Q. And these invoices, Government's Exhibit 23 contain therein numbers of barges carrying sand which was sold to Rider Supply Company?

A. That is correct.

Q. Would the barge numbers in these invoices tie in with the numbers shown in these vouchers of sand purchased by Duquesne Slag from Duquesne Sand Company?

A. That is correct.

Q. Now, would you just turn to that same month? What was that did you turn to the last time, September—you turned to a month in 1952. Turn to that same month and illustrate how that same barge number is shown therein?

A. Invoice dated September 23, 1952, No. 33, contains two barge numbers, D.S. 212 and 436, also included in that invoice are three other barges delivered to Rider Supply Company at Belle Vernon.

Q. Are those two barge numbers that you first mentioned, are those the same two barges that Duquesne Slag purchased from Duquesne Sand?

A. That is correct.

Q. Those are the same two that were transported by Crain Brothers?

A. That is correct.

Q. And which contain sand dredged from the dredge "Admiral" according to the records?

A. That is correct.

Q. All right, that's all I have, Mr. Myers. Oh, one other question. Is that true for the years '51, '52 and '53 regarding these invoices here?

A. That's correct.

Cross Examination

BY MR. CASEY:

* * * * * * * *

Q. Isn't it a fact or do you know that that was the first time that barge shipments could come into that plant was on October 26th, 1951, prior to that time except for that one isolated barge, all the sand deliveries were made by rail?. Doesn't that exhibit show that?

A. That could be true. I am not difinite on that. There may be some reason for it, could be the water was high or the dock was not dredged; might be some reason.

Q. Or the orders had been out to put it on the rail, contract?

A. Or possibly a hoist of some kind was missing or something to that effect.

Q. During that time—

A. This is our expense when we delivered this by railroad car, it was our expense, so you can see it would be very expensive for us to continue delivering by railroad car.

Q. I notice on those things you didn't break down the transportation?

A. No, sir.

Q. From wherever it went?

A. No, sir. We would lose a terrific amount of money. I don't know what the freight rate was at that time.

Q. Along that line, if you know now, with regard to those railroad cars, whose duty was it to unload those railroad cars?

A. I would think it would be Rider Supply Company because they were consigned to Rider Supply Company.

Q. In any event between the August the 7th, 1951 and October the 26th, 1951, all of the sand deliveries in that period at least except that one barge were delivered by railroad, as far as that exhibit shows?

A. Yes, that is approximately correct, that is right.

Q. Well, the exhibit will speak for itself.

A. All right, sir.

* * * * * * * *

Q. Do you know, those railroads, goldola cars, deliveries of sand, do you know where that came from? The ones that came into the Belle Vernon plant?

A. They originated at Brady Street yard.

* * * * * * * *

WILLIAM G. RIDER, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. William G. Rider.

Q. Mr. Rider, how old are you, sir?

A. 48.

Q. Married?

A. Yes.

Q. Children?

A. Yes.

Q. How many?

A. One.

Q. Back in 1951 and specifically around September of 1951, in what were you engaged?

A. Ready-mixed concrete.

Q. And under what name did you operate?

A. Rider Supply Company.

Q. That was your business name?

A. That's right.

BY THE COURT:

Q. Wait, let's get the microphone a little closer. You operated under the name of?

A. Rider Supply Company.

BY MR. TEITELBAUM:

Q. How long had you been in business as the Rider Supply Company?

A. I started in 1950.

Q. Prior to that, had you been in any other business?

A. In the contracting business.

Q. Under what name did you operate?

A. Rider Construction Company.

Q. Were either of these companies corporations?

A. No.

Q. Who owned those companies?

A. I did.

Q. Singly or different partners?

A. No, I owned them singly.

Q. When did you start working as the Rider Construction Company?

A. Back in 1941 I went in business.

Q. Prior to 1941, Mr. Rider, had you been in any business?

A. No.

Q. Did you ever operate another enterprise known as the Rider Coal Company?

A. I operated the Rider Coal Company in 1941 too.

Q. How long did you continue to do some coal mining under the name of Rider Coal Company?

A. I operated up to 1945 or '46, then stopped, then operated in 1948, something along in there.

Q. How long were you in business in the construction business?

A. From 1941 to 1951. Then I stopped and I did a state job in 1954.

Q. You continued to be engaged, your last job you said was in 1954?

A. '54.

Q. Did the Rider Construction Company employ any help, labor?

A. Oh yes.

Q. Did you employ anybody that was a member of the International Hod Carriers, Building and Common Laborers Union of America?

A. Yes.

Q. About how many of those men would you employ, Mr. Rider?

A. Sometimes we'd have 20, sometimes we'd have more.

BY THE COURT:

Q. This is while you were operating as the Rider Construction Company?

A. Construction Company.

MR. CASEY: That was in 1954, as I understand.

Q. Now, the Rider Construction Company, as I understand your testimony, you operated from 1941 to 1950?

A. Yes, that's right.

BY MR. TEITELBAUM:

Q. Then you said you took on another job in 1954?

A. 1954 I took on another job.

BY THE COURT:

Q. Now wait, let's get this straight. Then the Rider Supply Company you operated from 1952 to 1954?

A. 1955

Q. Did you do any work for the state in 1954?

A. Yes.

Q. Will you tell us as the Rider Coal Company just what you did? Incidentally was that a corporation or single enterprise?

A. No, that was a company.

Q. A company?

A. That's right.

Q. Did you have partners?

A. Yes.

Q. Who were your partners?

A. My mother.

Q. Your mother?

A. That's right.

Q. Were you mining your mother's land?

A. That's right, some of it.

Q. Where was that, that you did that mining?

A. Charleroi, Pa.

Q. And then when you went into business as the Rider Construction Company, what sort of work did the Rider Construction Company do?

A. We started out at doing driveways and then we got a job in Pittsburgh Steel doing small jobs, foundations, and we gradually kept bidding. We bid street jobs. From there on, we went into the state highway work and also built a dam for the Forests and Waters.

BY MR. TEITELBAUM:

Q. How did you determine how much you were to Pay these members of the Common Laborer's Union you employed?

A. I belonged to the Contractors' Association.

Q. Is that the one Mr. Tejan has?

A. That's right.

Q. How would you get your wage schedules and rates?

A. By the small books that were sent out to us.

Q. From the Construction Council?

A. That's correct.

Q. In addition to members of the Common Laborers' Union, did you employ any other union people in the construction company?

A. I don't get you.

Q. Did you employ any members of any other unions than the Common Laborers Union?

A. No.

Q. Just common laborers?

A. That's right. Oh, the operator engineers and— yes, the operator engineers and the carpenters, all that goes under Constructors Association.

Q. Did you get all of their wage rates from the same source?

A. That's right.

Q. When you needed employees in the construction company to work for you, how would you go about getting people?

A. They were generally hired from the local representative.

Q. The local representative of the union or what?

A. That's right, that's right.

Q. If you needed common laborers, you would go then to the local representative of the Common Laborers Union?

A. That's right.

Q. During the time up to 1950 when you were operating the Rider Construction Company and employing these common laborers, did you ever have occasion to meet the defendant, Nicholas Stirone?

A. No, I don't think I ever did.

Q. Had you ever had any discussions with him aside from maybe a cursory one that you don't remember?

A. No.

Q. I didn't get your answer?

A. No.

Q. Now in 1950 you tell us that you started the Rider Supply Company?

A. That's right.

Q. What was the business of the Rider Supply Company? What did you do?

A. The Rider Supply Company furnished concrete for the Pittsburgh Steel and also the domestic trade.

Q. When you say you furnished concrete for the Pittsburgh Steel, what was going on at Pittsburgh Steel that you furnished concrete for them?

A. Pittsburgh Steel at first were building the blooming mill.

Q. Where?

A. At Monessen and next—

Q. Wait—did they build it themselves or was there a general—

A. No, built by Eichleay Corporation. Next, it was built by Ragnar Benson. That was a strip and cold mill.

Q. The strip and the cold mill?

A. Yes, hot and cold.

Q. I want to go back to the time when you were dealing with the Eichleay Corporation. What did you supply the Eichleay Corporation for the blooming mill?

A. Ready-mixed concrete.

Q. How do you make ready-mixed concrete?

A. I was using slag, sand and cement.

Q. Did you use any gravel?

A. No.

Q. That's for the Eichleay people?

A. That's right.

Q. Where would you get your sand?

A. I bought the sand from Duquesne Supply Company.

Q. Where did you buy your gravel—excuse me,—your slag?

A. Duquesne Slag.

Q. Where would you buy your cement?

A. The cement came from Pittsburgh Coke and Chemical Company.

Q. And did you buy that directly from them or through the Duquesne Slag Company?

A. When we first started, when we first started the plant, I mean I had the contract for the Eichleay job. Mr. Dierker and I got together and he asked me why didn't I move up to their property and set up a plant.

Q. Who was Mr. Dierker?

A. Mr. Dierker was the president of Duquesne Slag Company.

Q. What did he ask you to do?

A. To move up to their plant and set up on their property.

Q. When was that?

A. That was in 1950.

Q. Up to that time—

A. I am pretty sure it was 1950.

Q. Up to that time, had you been buying any sand and slag from Mr. Dierker?

A. No.

Q. From Duquesne Slag?

A. No.

Q. Who had you buying it from up to that time?

A. I bought my sand—I wasn't in operation, I mean I hadn't bought any sand or slag for the Rider Supply Company at all.

Q. Then when you bid on the Eichleay job, then do I understand that Mr. Dierker suggested that you move into his premises?

A. That's right.

Q. What was on his premises?

A. At that time they had nothing there. They hadn't even—the only thing they had was a piece of vacant ground.

Q. There was no plant on it at all at that time?

A. No, they were moving in a portable plant.

Q. We have heard a lot about a batching plant. Will you tell us what a batching plant is, what you do there?

A. A batching plant is a cement bin, an aggregate bin, and your heating system and your water system. If you are buying off the river, you have to have a crane or a whirley sitting alongside of the river.

Q. Now, when you get this plant, will you tell us what it does now? What do you do with that batching plant?

A. What you do with the batching plant, you unload sand from the barges off the river to a stockpile, then you lift it from the river crane into your aggregate bin, your sand, then you go to another stockpile besides your bin and put your aggregate in.

Q. What is this aggregate?

A. That would be your slag. You have two different sizes of slag. Then you have your cement bin. That is full of cement. You take your mixer trucks and you drive under your aggregate bin, each ingredient is weighed, so much per batch. It's the same way with cement. You drive from one bin to the other. You put your water in. Then you are on the road to your destination.

Q. In other words, those trucks mix it while they are going to the destination?

A. Not all the time. They have to wait sometimes until they get to the destination before the inspector allows them to mix because the mix is some time.

Q. When we see these things going along the road, these things revolving—

A. More than likely they are washing out. They generally wash out on the return.

Q. You say when you first agreed with Mr. Dierker, there was nothing on that plant—nothing on that ground up there at Belle Vernon, is that right, this piece of ground?

A. There was nothing there at all when we started to talk.

Q. Now, was there a dock there?

A. No.

Q. Did you make an agreement with Mr. Dierker that you would move up there?

A. After we got it made, yes, after we made the agreement that I'd move up, why then I moved the aggregate bin, my aggregate bin to Belle Vernon.

Q. In other words, the aggregate bin was yours?

A. That's right.

Q. Where had you had it?

A. I had it stored at North Charleroi at my plant.

Q. Prior to that time, had you made any ready-mixed concrete?

A. I had for state highway work, yes.

Q. Where did you make it?

A. Well, we dry batched it to a big mixer and then used it, used it on the paving for highways.

Q. So you moved your aggregate bin up to North Charleroi, then you needed another kind of bin up there, didn't you?

A. Yes, we needed a cement bin and I didn't have a cement bin. Mr. Dierker told me he'd get the cement bin.

Q. Did Mr. Dierker put in a dock?

A. Yes.

Q. Did he put in a crane?

A. Half of one and I rebuilt it after he put it in.

Q. Where was that crane put up?

A. Oh, in Belle Vernon.

Q. Is that on the dock or does it move?

A. No it's on foundations.

Q. What purpose does the crane—

A. It swings halfway around.

Q. What did you do with that crane?

A. Unload sand out of the barges.

Q. The barges pull up and tie up at the dock and you use the crane to unload the sand?

A. That's right.

Q. Did you also use it to unload slag?

A. No.

Q. How did your slag arrive?

A. We picked it up in trucks at their crushing plant.

Q. Where was their crushing plant located?

A. That was about three or four hundred yards away from the plant.

Q. That was on the same piece of ground that you had the batching plant?

A. That's right.

Q. How did you pick up your sand?

A. From the barges with the crane.

Q. Now, Mr. Rider, did you have the operation of that crane?

A. Yes.

Q. Was any of the sand used in the crushing operation of Duquesne Slag Company? Did they need any sand within the making of slag?

A. No.

Q. What was the sand that was unloaded at Belle Vernon used for?

A. Used for ready-mixed concrete.

Q. Who used it for ready-mixed concrete?

A. Eichleay Corporation, Ragnar Benson and domestic trade.

Q. That is, you used it for them or did they use it directly themselves?

A. I used it directly myself.

Q. To make the products for them?

A. That's right.

Q. Was any sand docked in Belle Vernon and used for any other purpose except for your purposes in mixing ready-mixed concrete?

A. Yes, there was sand unloaded for Frank Mashuda Company.

Q. When was that?

A. I believe it was 1953.

Q. How about 1951 and 1952?

A. Could have been '52 and '53

Q. Who unloaded that sand?

A. I did.

Q. Do you know where that sand came from or who brought it in there?

A. That sand came from Duquesne Slag Company.

Q. That's the same place you got sand, is that right?

A. That's right.

Q. Was any sand used in those years for any other purposes that was unloaded there?

A. No.

Q. Were you ever personally present when those barges were unloaded at the dock?

A. Sometimes I was.

Q. Do you know of your own knowledge whose barges they were that were bringing the sand in?

A. Part of it was Duquesne's barges and part of them is Crane Brothers barges.

* * * * * * * * *

Q. Did you have an agreement with Mr. Dierker that you must buy all of your sand from the Duquesne Slag Company?

A. That's right.

Q. During the whole course of the time that you were delivering sand or delivering ready-mixed concrete to the Eichleay Corporation under your first contract, during that time had you ever met the defendant, Nicholas Stirone?

A. No, I had seen him before.

Q. But did you know him personally?

A. No.

Q. Had you ever had any discussion outside of maybe a cursory discussion?

A. No.

Q. During that time while you were at Eichleay Corporation, did you hear anything of any other contractor or any other prospect for selling ready-mixed concrete?

A. Yes, there was a job coming up at Allenport and practically everybody knew that there was a new blooming mill, our new strip mill, hot mill, going into Allenport and of course, through the papers and through the talk you get through the steel company, why you knew the thing was up for bid. Of course, we had some companies call us in for quotations too.

Q. What companies, the best you can recall, asked you for quotations?

A. Eichleay asked me for quotations, Ragnar Benson asked me for quotations.

Q. Did you make a quotation to Eichleay?

A. Yes.

Q. Did you make a quotation to Ragnar Benson?

A. Yes.

Q. At that time at the time you submitted a bid for the Eichleay Corporation and to Ragnar Benson Corporation for the ready-mixed concrete, did you know the defendant, Nicholas Stirone?

A. I knew of him.

Q. Had you ever met him?

A. No.

Q. Had you ever had any discussion with him?

A. No.

Q. Did you ask him to render any services for you?

A. No.

Q. Do you recall hearing who got that contract?

A. Yes, I heard that, of course I was watching for it because I wanted to get it and I heard that Ragnar Benson had got the contract.

Q. When you heard that; do you know what the date was that Ragnar Benson got that contract?

A. August the 29th.

Q. What year?

A. 1951.

Q. And what did you do when you heard Ragnar Benson got the contract, if anything?

A. I called Jacob Kassab.

Q. Who was Mr. Kassab?

A. He's vice president of Ragnar Benson Company.

Q. In talking to Mr Kassab, why did you call Mr. Kassab?

A. I called him to see how we stood on the contract.

Q. That is the bid you had already made?

A. That's right.

Q. Was that bid or proposal you had made oral or in writing?

A. Oral.

Q. It was done how?

A. Over the telephone.

Q. Did you ever meet Mr. Kassab?

A. I had met him once.

Q. Had you ever done business with Mr. Kassab?

A. No, I hadn't.

Q. Do you recall when you called Mr. Kassab, how long it was after Ragnar Benson got the contract?

A. How is that again?

* * * * * * * * *

Q. When did you call Mr. Kassab again?

A. You mean after the first time?

Q. Yes, after the time that you called him to submit a proposal, when did you next call him?

A. I called him right after, the next couple of days after the contract was awarded.

RICHARD C. WITT, a witness in behalf of the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. You will recall you were previously sworn?

A. Yes, sir.

Q. Also will you again state for the jury your name and position?

A. My name is Richard C. Witt. I am a buyer for the Pittsburgh Steel Company.

Q. You are in the purchasing department, is that correct?

A. That's correct.

Q. Now, Mr. Witt, you testified before as to the contract between the Ragnar Benson Company and the Pittsburgh Steel Company to build a certain plant known as the hot strip mill in Allenport, Pa. Do you recall that testimony?

A. Yes, sir.

Q. I show you now Government's Exhibit 8 which is the purchase order of the Pittsburgh Steel Company? That's the one that you previously identified, is that correct?

A. Yes, sir.

Q. Would you state to the Court and jury the date on which that purchase order was given?

A. August 29, 1951.

Q. Now, Mr. Witt, would you explain to the Court and jury the function of the Board of Directors of the corporation in such a matter?

A. At some time previous to the time when a contract is to be let for any major program of the company or any major purchase, the Board of Directors at one of their regularly scheduled meetings, will appropriate a certain amount of money for the project that is contemplated.

Q. Let me interpose something in a question, Mr. Witt. At the time they appropriate the money for the erection of anything or for an expenditure, do they determine to whom that expenditure is to be made?

A. No, sir.

Q. So that when they met to appropriate the money for the erection of a hot strip mill at Allenport, Pa., did they at any time act on who the prime contractor was to be?

A. No, sir.

Q. Who determines the question as to whom the contract should be awarded?

A. Well, that is a management decision which is usually determined by the engineers and the purchasing department working together.

Q. What happens leading up to the awarding of that purchase order?

A. Well, the management—

BY THE COURT:

Q. Pardon me just a moment. May I look at that, Mr. Witt?

A. Yes, sir. Management decides that they have or when they receive information from the Board of Directors that their proposed new project has been approved as far as appropriation is concerned, they discuss with each other, the purchasing department and the engineers, the people in the plant, just what they want. I mean, they originally determine that they want a new hot strip mill and then after they have the appropriation and the greenlight, so as to speak, to go ahead on the project, they determine where they are going to put it and how big it's going to be and so forth and the minor details as to how many windows are going to be in it, and all such stuff as that. Then they ask for bids from various people who are in the business of erecting such a building or such a mill.

BY MR. TEITELBAUM:

Q. I show you Government's Exhibit 7 and ask you if that is such a bid?

A. Yes, sir.

Q. And whose bid was that?

A. That is from the Ragnar Benson Company.

Q. What was the date of that bid?

A. The date on this is July 30, 1951.

Q. Then will you tell us what happens after you receive the bids?

A. Well, they are usually tabulated. These are generally competitive bids and the people who submit the bids are informed as to whether or not they are bidding on the proper thing. I mean, somebody might be bidding on something that doesn't have anything to do with the program that the company has in mind. If the bid is in line with what we want, they are tabulated and the one who has the best bid, it's not necessarily the lowest in price, but in most cases it would be, is informed that he has received the contract.

Q. How is he informed that he has received the contract?

A. Usually by personal message, I mean telephone call. It might be that he is called up on the telephone or notified in some such manner to come up to our offices to the director of purchases office and he wants to discuss his proposal with him. When he arrives, if everything is—all the details have been worked out prior to this time, why he says, "Mr. X, you have been awarded the contract to build a new hot strip mill."

Q. When is the written purchase order prepared to be given to him?

A. Usually at that time or very shortly thereafter in the length of time that it takes the young lady who types up these orders to type it up. If the man was called in at say five o'clock in the afternoon and said that he had received the contract, he might not receive this document until the next morning, assuming that the typist has gone home for the evening. If he arrived at nine o'clock in the morning he might get it within the hour.

Q. Looking at the exhibit which you hold in your hand, which is Government's Exhibit No. 8, can you tell the Court and jury the earliest date on which the Ragnar Benson Company or anybody else could have known they were awarded this contract?

A. The earliest possible date from this document would be August 28th, the day before the date of this contract. It says in this contract that this contract was written for Ragnar Benson, quotation dated August 13th, revision August 28th. So there was some revision made on the 28th of August which could not have been incorporated in this contract at a time prior to August 28th, so August 28th would be the earliest possible date that anyone could have known that Ragnar Benson was going to receive the contract.

Q. When a contract of that scope is let, do you release that to the public?

A. Yes, sir.

Q. How is that done?

A. It's usually done by a press release through our public relations department.

Q. Thank you, sir, you may cross examine.

WILLIAM G. RIDER, a witness in behalf of the Government, having been previously sworn, was recalled and testified further as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Now, Mr. Rider, you recall you are still under oath?

A. Yes, sir.

Q. You testified yesterday that on some date prior to the awarding of the contract to Ragnar Benson they called you on the phone and that you had submitted by telephone a bid for ready-mixed concrete?

A. That's right.

Q. Did you then later call or contact Mr. Kassab again?

A. I contacted Mr. Kassab several days after he was awarded the contract.

Q. Why did you contact him then?

A. Well, I was after the contract. That's what I was after—work. I was after the job.

Q. What did you want to know from Mr. Kassab?

A. How I stood getting the contract.

* * * * * * * * * *

Therefore I renew my objection to the testimony relating to the telephone call after the award of the contract to Ragnar Benson and ask it be stricken from the record.

THE COURT: Well, perhaps you wish to ask Mr. Rider how he heard this.

Q. At the time you called Mr. Kassab up, not the time you made the bid now, not the time you made the proposal, but the call that we are now talking about, why did you call him?

A. I called him to see about getting the contract for the concrete. . .

Q. What caused you to call him at that time?

A. Because it was in the paper. It was also all around the Valley that they had gotten the contract and even came out of the mill.

BY MR. CASEY:

Q. You say even came out of the mill?

A. That's right. It was well known in the mill that who got the contract and I was very close to it.

THE COURT: For the purpose of the record, in view of Mr. Rider's testimony, your motion to strike will be overruled

Q. When you talked to Mr. Kassab at that time, was he able to tell you anything about the awarding of the concrete contract for ready-mixed concrete?

A. No, he told me that he was still looking into it.

Q. When did you next see Mr. Kassab or talk with Mr. Kassab after that phone call?

A. I believe it was several days or a week afterwards, I called him again and wanted to make an appointment to come to Pittsburgh that day and he told me he was busy. I said, "Well, Jake, how about seeing you at home this evening? Are you going to be at home?" He told me yes, so my wife and I drove over to Mr. Kassab's house that evening.

Q. Where does Mr. Kassab live?

A. Cannonsburg.

Q. Where were you living at that time?

A. North Charleroi.

Q. You and your wife drove over there that evening?

A. That's right.

Q. Was Mr. Kassab at home?

A. Mr. Kassab was home. He was mowing the lawn or out doing something in the lawn.

Q. Did you have a conversation with him

A. Yes.

Q. Where was your wife while you had the conversation?

A. My wife was with Mrs. Kassab over in the dining room or sitting room.

Q. Where were you with Mr. Kassab?

A. In the den.

Q. Did Mr. Kassab state anything to you concerning the awarding of the contract?

A. Well, we talked about whether I was able to handle the job. I told him I was buying more equipment, more hauling equipment and I would be well equipped to handle the job because I was coming off the Eichleay job

Q. Did he say anything to you about who was going to get the contract?

A. As we left, he told me, "Bill, you have no worry, you have the contract."

Q. Mr. Rider, at the time you submitted your original proposal, had you ever talked to the defendant, Nicholas Stirone?

A. No.

Q. At the time you made your first phone call to Mr. Kassab after you heard he was awarded the contract, had you ever talked to the defendant, Nicholas Stirone?

A. No.

Q. Of course, I am referring to substantive conversation, not saying hello to him?

A. No.

Q. At the time you made your second call to Mr. Kassab and asked him for an appointment, had you ever met the defendant, Nicholas Stirone?

A. No.

Q. At the time you went to Mr. Kassab's house had you ever met the defendant, Nicholas Stirone?

A. No.

Q. Had you ever up to that time, either directly or indirectly asked Mr. Stirone to give you any assistance in this matter?"

A. No, I didn't.

Q. Was Mr. Stirone in the business of selling ready-mixed concrete?

A. I don't know.

MR. CASEY: I think that would be obvious.

MR. TEITELBAUM: Thank you, sir, that's my point.

Q. I show you Government's Exhibit No. 10 from the files of the Ragnar Benson Company and ask you if you recognize that document?

A. Yes.

Q. That's the purchase order from Ragnar Benson for the concrete, is that correct?

A. Yes.

Q. Would you read the date on which that purchase order is dated?

A. September the 25th.

Q. Now, Mr. Rider, Exhibit No. 10 is the formal purchase order, and you said that that was dated September 25, is that correct?

A. That's right.—Can I see that again, Mr. Teitelbaum?

Q. You look at the exhibit.

A. I want to see this again.

Q. What is the date on which you received the formal purchase order from Ragnar Benson for the ready-mixed concrete, the written purchase order?

A. September the 25th.

Q. What year?

A. 1951.

Q. Now, Mr. Rider, in your business is it customary to wait for the formal purchase order before you begin delivery on the contract or not?

A. Yes, I called for that. I had already made a delivery.

Q. On what day did you make your first delivery of ready-mixed concrete on this contract?

A. Offhand I don't know what date that was.

Q. Who kept the records of the delivery?

A. My wife

Q. Do you recall whether it was before or after September 25th?

A. It was before.

Q. At the time you made your first delivery of ready-mixed concrete, had you ever met the defendant, Nicholas Stirone?

A. No.

Q. At the time you received the formal purchase order, had you ever had any conversations with the defendant, Nicholas Stirone?

A. Yes.

Q. Will you explain to us where that was?

A. It was at the Belle Vernon plant.

BY THE COURT:

Q. At where?

A. At the Belle Vernon ready-mix plant.

Q. That's where you were mixing your concrete

A. That's right.

BY MR. TEITELBAUM:

Q. How did that come about? Will you tell the jury what happened?

A. One day that I got a call from Mr. Dierker of Duquesne Slag Company asking me to meet him at the Belle Vernon plant.

Q. Did he tell you what he wanted?

A. No. So I met him at the Belle Vernon plant. He came up in his car.

Q. Where were you waiting?

A. I was waiting at my field office.

Q. Some of the jury might now know what a field office is.

A. Well, it's nothing but an ordinary trailer. That's what I had as a field office, a van, with some doors in it.

Q. Then what happened?

A. He drove up in between their office, their shipping office and my office.

Q. He drove up in what?

A. In an automobile, car. I went over. He had a man with him. I went over and he introduced me to Nicholas Stirone.

Q. That's the defendant sitting right over there?

A. That's right.

Q. Where was Nicholas Stirone sitting?

A. On the right hand side of the car.

Q. Had you ever formally had the pleasure of meeting Mr. Stirone before?.

A. I knew who he was.

Q. You knew who he was?

A. That's right.

Q. How did you know who he was?

A. I had seen him around the contractors' banquets and different places.

Q. Did you know what his position was in labor?

A. Yes, I did.

Q. You yourself had been in the construction business?

A. Yes.

Q. Had you ever heard of Mr. Stirone?

A. Oh yes, he is well known.

Q. What did Mr. Dierker say to you?

A. Mr. Dierker told me to get in the car and I got in the back seat of the car. We talked a little while. Mr. Dierker told me that Mr. Stirone had something to say to me.

Q. That's the defendant sitting there?

A. That's right, defendant.

Q. What did the defendant have to say?

A. Mr. Stirone told me he knew I had already had the contract, but he wanted 50 cents on every yard of concrete I hauled to the Ragnar Benson Company. I objected.

Q. Why did he say he wanted it?

A. Why did he say he wanted it?

Q. What for?

A. He told me he was going to keep me out of labor trouble. If I didn't pay it, I wouldn't be able to hold on to the contract. I got mad, got out of the car. Mr. Dierker got out of the car and caught me by the arm and told me, he said, "Bill, you have got to go through with it." I said, Dierker, I can't make out. He's going to cut my profit." He said, "You've got to go through with it. That's all there is to it." He says, "Now, we'll make some agreement or some arrangement on price at the plant."

Q. Did you ever ask the defendant Stirone why he wanted 50 cents a square yard or what for?

A. No, I knew what it was all about then.

Q. What did you know?

A. Well, I knew it was a shake-down when he first came there.

Q. And did you subsequently agree to give him the 50 cents a square yard?

A. I came back to the car and after Dierker had put pressure on me, I definitely gave in.

Q. What was the reason that you gave in? What was in your mind when you agreed to do this?

A. I had a lot of equipment. I had to keep working. I needed the work very, very bad, and I knew darn well, if I didn't go through with it, I wasn't getting any more contracts.

Q. Did you and Mr. Stirone have any dis ussion about how this shake-down was to be paid?

A. At the car, he mentioned something about paying, something about cash, and I said everything had to go through my books.

Q. How did you say you wanted to pay him?

A. By check. I don't believe I did say at the time whether I wanted to pay it by check or not. I just took the check in.

Q. You say you had already sold certain ready-mixed concrete and already made delivery of some by that time?

A. That's right. I had already made delivery.

Q. This payment was to be made on what basis, 50 cents per what?

A. Fifty cents on every cubic yard of concrete that went into the Ragnar Benson Company.

Q. After you agreed to pay him, where did you go?

A. I went direct to my office. I was mad as a hornet. I went down and I told my wife what we had to do.

Q. Did your wife ask you any questions about a proposition like that?

A. She said, "Well, why do you," and I told her why. I told her we wouldn't be able to hold on to the contract. I said if we want any more business, we are going to have to go along with it.

Q. What instruction did you give your wife, she was your book-keeper?

A. That's right.

Q. In charge of your office?

A. That's right. I told my wife, she said, "How are the payments going to be?" I said definitely we are going to pay by check. Everything was going to go through the company books.

Q. Did you give her any instructions as to how to enter it in the company books?

A. No, I told her no. I don't tell her how to enter anything in the books. I don't tell her that.

Q. Did you give any instructions on how to keep records on the concrete?

A. I told her to keep all records on the concrete, what we was running in the Allenport mill, keep records on the Stirone.

Q. On this delivery of concrete you had already made prior to your conversation with Stirone, did you give him any money on that?

A. We went back and picked it up and paid for it.

Q. When did you first pay Stirone money, when did you first make payments on this contract, if you remember?

A. He didn't want any money in 1951.

Q. Did he say that?

A. Yes.

Q. What did he say?

A. He told me on account of tax purposes, he'd rather wait until the '52. I would have liked to have paid it in '51. He told me to hold off until '52 and I took it in '52 in February.

Q. Where did you take it?

A. I took it to the union office.

Q. Did you know where his office was?

A. I had to look it up in the telephone book.

Q. Did you find it?

A. Yes.

Q. Was Stirone there?

A. Yes.

Q. How did you pay him, by

A. By check.

Q. Who prepared your checks and kept your books?

A. My wife.

Q. Do you yourself then have any present memory as to how much that check was?

A. I think the first check was along fifteen hundred or something. I am pretty sure.

Q. Your wife made it up?

A. That's right, I signed the first check.

Q. You signed the first check?

A. That's right.

Q. All right. Did you make your payments—that first check covered deliveries in what months, do you know?

A. No, I don't.

Q. After that first check, did your deliver to him by hand? Where did you deliver the rest? How was the rest of them delivered?

A. The rest of them, all the rest were mailed to him.

Q. Did you mail it or did your wife mail it?

A. I mailed some and my wife would mail them. She would make them out.

Q. Did she make them all out?

A. She'd make them out. Of course, I would take the envelope and put it in the mail box or something.

Q. Where were they mailed to?

A. Some went to Florida, some went to New York, some went to the union office, some went to the Bigelow Apartments.

Q. What was at the Bigelow Apartments? Why did you send some to the Bigelow Apartments?

A. I think that's where he lives.

Q. That's where Stirone lives?

A. That's right.

Q. How would you know to mail them to Florida and a lot of hotels and places?

A. He would tell me that's where he's going to be at.

Q. How would he tell you?

A. He would call me or tell me where he's going to be at. Most generally he called me up.

Q. Did you ever get delinquent in your payments?

A. Yes, I did.

Q. I mean in the payments of the shake-down

A. That's right, I got delinquent lots of times.

Q. And what would happen when you got delinquent in your payment of the shake-down?

A. In a few days after I was delinquent he was on the telephone calling me up. He said, "Bill, time to get the payment in here," he says, "I need the money." Then if I didn't send the money in right away, in a few days Mr. Dierker would be on the telephone saying, "Bill, Nick wants his money. You better pay it. He's getting nasty."

Q. Did Stirone there know how much he was supposed to get paid?

A. Generally he always knew.

Q. In other words, he knew.

A. After he started getting delinquent on payments, then he knew how much generally was coming because he generally told me about how many yards I had poured in that period of time.

Q. Incidentally how were you paying this Dierker and Pittsburgh Slag for rent on that place out there?

A. Fifteen cents on every barrel of cement went through the bin.

Q. Were you making cement at that time for anybody excepting Ragnar Benson?

A. I was making cement for Ragnar Benson, for the Eichleay Corporation and I also think I had a couple of state jobs.

Q. Out of that plant, were you paying 15 cents a barrel?

A. Fifteen cents a barrel for every barrel of cement that went through the bins.

Q. And had you entered into an agreement there on a lease of your batching plant, had you not? You had a lease on the property where your batching plant was?

A. Yes, I had a lease.

Q. Were you restricted in any way as to whom you could buy your sand from?

A. I was restricted. I had to buy all from Duquesne Slag Company. Not unless there was something that happened, that they absolutely couldn't furnish me. Then they'd tell me I could go on the outside and buy it.

Q. Did you have the right on your own to go out?

A. No, sir

Q. Did you make ready-mixed concrete out of anything beside sand and slag and water, cement, of course?

A. No, sir.

Q. Did you ever make it out of gravel?

A. No, sir, they wouldn't allow it.

Q. Who wouldn't allow you?

A. Duquesne Slag Company.

Q. But it can be made out of gravel?

A. That's right.

Q. Now, you say that you got delinquent, Stirone would call you and sometimes Dierker would call you?

A. Dierker would call me a day after.

Q. Suppose they called your office and you weren't there? Did they talk to anybody else in the office?

A. No, sir.

Q. Would Stirone talk to anybody else?

A. No, sir.

Q. Would he talk to your wife?

A. He got so he got to talking to my wife because I'd tell him to call my wife. She knew more about it than I did.

Q. Until you told him that, did he ever talk to your wife?

A. No. I did that to get him off my back.

Q. Would he tell you what hotel you were to send it to in New York?

A. Waldorf-Astoria.

Q. Would he tell you where to send it to Florida?

A. I don't remember now whether we knew where to send it but I don't know where at.

Q. Now, did you ever discuss with Mr. Stirone the fact that these expenses were kind of heavy and it was going to hurt you, this was hurting you?

A. I told him lots of times, "Mr. Stirone," I said, "You don't have a dime of this thing to lay out." I said, "I have got all the money to lay out." I said, "You can certainly wait a little bit, because I have Duquesne Slag to pay, I have the cement to pay for." He told me he had other obligations and other people to take care of.

Q. Mr. Rider, how long did you continue to deliver ready-mixed concrete to Ragnar-Benson, roughly?

A. It was into '54.

Q. Into '54. Did you complete the contract?

A. That's right.

Q. Did you pay Mr. Stirone the 50 cents per barrel shake-down on every barrel that you delivered?

A. Every barrel, except $1,400.

Q. So that at the time that you completed your delivery were you behind in your shake-down payments?

A. $1,400.

Q. Did Mr. Stirone want his $1,400 shake-down money?

A. He kept after it.

Q. What happened to you in 1954?

A. In 1954 I got in financial difficulty.. In '55 I went I was thrown into bankruptcy.

Q. Was it a voluntary bankruptcy of your own free will or

A. No, I was thrown in by creditors.

Q. Do you remember who the creditors were that did this to you?

A. One of them was Duquesne Slag Company, and others.

Q. Now, after that time when you listed your creditors, did you list Mr. Stirone here as a creditor for that money?

A. No, we didn't.

Q. Why didn't you list him if you owed him $1,400?

A. We didn't feel like we owed it to him.

Q. Did Mr. Stirone ever file any claim with the bankruptcy, with you or do you know?

A. I couldn't tell you that.

Q. You couldn't tell whether he did or not?

A. No.

Q. You told us Dierker at the time he was helping Stirone get the shake-down said to you that well "If you have any trouble, we will make any readjustment." Did you ever go to him and ask him for an adjustment?

A. I asked him a couple of times, when I was getting behind. I asked him to make adjustments. I asked him to cut off the 15 cents a barrel. I was paying the rate eight to nine thousand dollars a year rent for a little piece of property.

Q. Now, do you remember that you were telling that Mr. Stirone when he was talking to you said, well, he was going to keep you out of labor trouble? Did you ever discuss with him later about your having any labor trouble?

A. I had lots of labor trouble after that.

Q. With his union?

A. Driver's Union.

Q. Did you go to your employee and ask him about it, about his going to help you?

A. I called him. Every time I called he told me he'd go through channels.

Q. Was he the channel?

A. No.

Q. So that Dierker didn't give you any reduction at all?

A. No, sir.

Q. And Stirone didn't help you with your labor troubles?

A. No, sir.

Q. Did Stirone render any services in return for the money he received?

A. Not that I know of.

Q. Did he ever offer you any services except the one about keeping you out of labor trouble?

A. No

Q. That's all, cross examine.

* * * * * * * * *

Cross Examination

Q. Employer-employee relationship?

A. Oh, she worked for me. I knew her before she worked for me.

Q. How long had she worked for you?

A. Oh, she went to work for me in 1950, something along in there. She was a bookkeeper.

Q. What were her duties? Where was she located?

A. What was her duties?

Q. Yes

A. She took care of the office, she ran the office.

Q. Where was the office?

A. The office at the time was in the Authority Building in Charleroi.

Q. Did you have an office at North Charleroi that she ran?

A. Then I had an office in North Charleroi. I moved to North Charleroi.

Q. Jeanne Anderson she went with you from the one office to the other?

A. That's right.

* * * * * * * * *

Q. Well, in 1950 you said you went in the ready-mixed concrete business?

A. Oh yes, I went in the ready-mixed concrete business at Belle Vernon.

Q. Did you lease from Charleroi Supply?

A. I lease from Duquesne Slag Company.

Q. In 1950?

A. That's right.

Q. What did you lease from them?

A. I leased a piece of ground at the time and this one cement bin.

* * * * * * * * *

A. No, no. It was just an ordinary lease made up by Dierker and I. Dierker made it up and I signed it.

Q. In writing?

A. That's right.

Q. That was in 1950 sometime?

A. I think it was 1950.

Q. That gave you authority to go on Duquesne Slag Products Company's land at Belle Vernon?

A. That's right.

Q. Then there was one cement bin there. Is that the 300 barrel or the 400 barrel, do you remember?

A. I don't remember what it was. I will tell you what it was. If you want to know the name of the barrel, it was the Blawnox.

* * * * * * * * *

Q. Was that in 1950

A. I believe it was 1950 when we moved into Belle Vernon.

* * * * * * * * *

Q. 25 doesn't mean much to you then. We will say 20. Is that a great number of years?

A. I suppose I have known Bob for 20 years.

Q. You mean from now or from 1950?

A. From now.

* * * * * * * * *

Q. Is that how you got on this property in the beginning, he came to you?

A. Oh no. How I got on the property was that I had got the contract for Eichleay Corporation. Then I had to hunt out to get somebody to supply me with material.

Q. You had to hunt them up?

A. Yes, I had to hunt them up. I was going to set my batch plant at North Charleroi but I wasn't able to get material up there and the only way that I got Dierker, Dierker decided that he was going to put a crushing plant in at Belle Vernon for the slag. So he told me why not come up to Belle Vernon and set the plant up there and then we'd operate from Belle Vernon so that's what happened. When we first started, I had my bin. He didn't have a bin. I didn't have a cement bin. He had a cement bin. So we joined forces. I took a bulldozer in, leveled off, and for the time being they did some batching for me. We were supposed to have the railroad. We were supposed to have the dock built so that — could get material off the river right away. That wasn't built.

Q. Was that in 1950, sir?

A. Nineteen what?

Q. Fifty?

A. I think that was the end of 1950, something along in there.

* * * * * * * * *

Q. You are not very happy about Duquesne?

A. ~~In billing.~~

Q. You are not very happy about Duquesne and the treatment you received up there, are you?

A. No, sir, I am not.

Q. They are one of the petitioning creditors in bankruptcy, are they not?

A. They are.

* * * * * * * *

Q. Why is that?

A. Mr. Dierker turned me down, told the bonding company I wasn't any good.

* * * * * * * * *

Q. You had to pay them whatever their price was for their sand for their slag?

A. I was paying plenty. I was paying more for their materials than my competitors were being charged for it.

Q. They took advantage of you that way?

A. That's right.

Q. Wouldn't let you use gravel?

A. That's right.

Q. And you were upset about that?

A. That's right.

* * * * * * * * *

Q. Did you have to buy your sand or either gravel or slag?

A. Oh, well I knew I had to buy everything from them.

Q. You knew that if you were on their property?

A. That's right, but I don't know whether we had the 15 cent set-up at that time or not. I can't tell you.

Q. You had some figures set up?

A. I think there was some figures, but I don't remember. We worked in there without an agreement for quite awhile without even an agreement.

* * * * * * * * *

Q. You kept in contact with him about that?

A. No, not too much on it. I mean he wasn't, I can say Dierker was never any assistant to me in getting any work in the Pittsburgh Steel Company. He was going to get me all the work of maintenance in the Pittsburgh Steel Company, but I never got it.

Q. When did he tell you that?

A. Oh, he told me right at the start.

Q. That maintenance—

A. He had a pull and he would get me the maintenance, cut Charleroi Supply out and get me the maintenance work but I never got it. I got a little bit but very little.

Q. Charleroi Supply, they were a competitor?

A. That's right, they are Dravo Corporation.

Q. That's a competitor of Duquesne Slag?

A. That's right.

Q. So during those occasions that you were talking to Mr. Dierker about such matters as Pittsburgh Steel, you knew that they were going to build an addition to their mill and build one at Allenport, is that right?

A. Anyone knew that, Mr. Casey. That was all known through the Valley. There was going to be another mill built at Allenport. That was the big thing for the Valley.

Q. You were looking at that and wanted to get whatever business you could get out of it?

A. That's right.

Q. During the time that you were operating this yard in 1950 and in 1951, what was the provision for the hauling of sand into that plant? How did that get in?

A. When we first started, Dierker promised me to have the river fixed so that we could get barges in and was going to get a whirley in for me. That didn't happen.

* * * * * * *

Q. So you couldn't get any river sand in 1950, did you?

A. When we first—when it first started we had everything in by railroad. Duquesne paid for the sand, getting it there. But brother, I paid for all the demurrage when it was tied up in the steel mill, trying to get ships. Then I worked overtime to get the thing loaded to get it off demurrage.

Q. You were very unhappy about that?

A. That was a sad deal.

Q. That was all because your sand all came in by railroad car, is that right?

A. Yes, that was the sad story about railroad cars.

Q. They'd come in at such times at night you'd have to have them unloaded or demurrage would pile up and cost you extra?

A. That's right, you had only a certain time. You had only a certain time at the steel mill to get your cars shifted because you had to catch it when their shifter came through their yards to pick it up.

Q. So it was very unhandy, costly and inconvenient as far as you were concerned to have them do that?

A. That's right.

Q. Did you tell Dierker how unhappy you were about that?

A. I told him they'd have to get the barges, so that we could get barges up.

Q. That's one of the reasons you had trouble with Duquesne Slag over the cars, the railroad cars, the demurrage and the time of placement?

A. It was very costly.

* * * * * * *

Q. In any event that plant was so set up after 195[illegible] when you went in there, you could receive sand and gravel by rail and cement?

A. Not gravel. I couldn't use gravel, Mr Casey.

Q. You could use it on that church job?

A. No, I couldn't. I couldn't use anything. I had to use slag, because it was a slag plant. Mr. Dierker told me it was a slag plant. I'd have to use slag.

Q. So you had no choice?

A. I had no choice.

Q. If you had any independent customers you'd have to give them slag?

A. When I had independent customers, wanted gravel, they didn't buy from me. They went across the river and bought from my competitor.

Q. That was because of the restriction Mr. Dierker put on you?

A. That's right.

Q. Then the Duquesne Slag Company agreed to put in a crane for you and they didn't do it, they only put—

A. A whirley, a stiff leg.

Q. They put in only half a crane?

A. Well, when I got it, it didn't even work when I got it. It was an Army surplus part. It had cast iron bushings in it and three days after I run it, the cast iron bushings went bad and all the shive wheels, I had to tear it down and have machine work done and make new shive wheels, put in bronze bushings, then have new shafts made. I rebuilt it. Then it come—

Q. At your expense?

A. At my expense.

Q. And you were not too happy about that?

A. Of course, nobody would be happy about that.

Q. Did you tell Dierker all about that or his company?

A. Yes, they all knew about it because I kept calling him up. I think I wrote him a letter at one time.

Q. Is Dierker the only one you had any controversey with in the Duquesne Slag Company?

A. That's right.

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AT SIDE BAR

THE COURT: I am placing in an envelope marked Court Exhibit No. 1, a postal card dated

June 5, 1957, addressed to Mrs. Minnie Neuner. This postal card was delivered to me by my tipstaff at or about 9:40 a.m. today, June the 7th.

Counsel for the Government and counsel for the defendant were advised of the receipt of this postal card and the card was exhibited to them, and in accordance with the request of counsel for the defendant, I again cautioned the jury with reference to newspaper publicity, radio and T.V. coverage of the case, and also any attempt to contact them, either directly or indirectly. This card is placed in an envelope marked Court Exhibit No. 1 and is not to be opened without the permission of the Court.

MR TEITELBAUM: Counsel for the Government is satisfied with this and joins in this proceeding.

MR. CASEY: I have no objection.

(Postal card dated June 5, 1957, marked Court Exhibit No. 1.)

AFTERNOON SESSION

2:00 p.m.

WILLIAM G. RIDER resumed the stand.

Cross Examination (Resumed) by Mr. Casey:

Q. Mr. Rider, before the recess I was asking you about the date, about an inventory that you purchased from Duquesne Slag Company at or about the time of that contract that the lawyer drew up. Would you look at this, please?

A. What about it?

Q. Did you buy an inventory from them at or about that date? Did they charge you a certain amount for it?

A. I couldn't tell you, Mr. Casey. If it is billed to me, I must have bought it.

Q. You have no recollection of that?

A. I couldn't tell you. If it was billed to me, we got it.

Q. It was billed to you and you got it and you probably paid it?

A. If it was billed to me, we got it.

Q. That's what it says, We charge your account as follows: Inventory on hand as of August 7th, 1951, sand, slag and cement?

A. You are talking about the cement. There was a time in the contract that Duquesne Slag Company were getting the bill for the cement.

Q. Sure, directly?

A. That's right and then they'd send us the bill for the cement.

Q. It was them—

A. They paid the cement bill.

Q. They were guaranteeing it, in other words?

A. That's right, to start off with. The whole thing was to start that plant. Duquesne thought that they would operate the plant their selves and I would just truck out from it but it turned out that I became the operator altogether.

Q. Before October 7, 1951, would you say? At the time of that invoice or that inventory?

A. I couldn't say. I wouldn't say that. I don't know.

Q. There were two ways you operated. When you operated first under the contract, Mr. Dierker and yourself, that was where you were going to truck it and do little things?

A. No, it was a mixed-up affair when we first started because it was an oral agreement just to get going, I mean. We worked together to get the thing going.

Q. Later Mr. Dierker drew up something and he sent it to you and you signed it?

A. He brought it over. We hashed out a few angles, then I guess I signed it, I think I did.

Q. Later you got to the big agreement here that the lawyers prepared?

A. That's right.

Q. Then as of that time, there was going to be a new arrangement whereby you were going to operate it or buy it?

A. Even on this basis right here, I was operating it, but they were still buying the cement.

Q. They were still then furnishing you the slag, sand and gravel, whatever it is in here?

A. What do you mean?

Q. In other words—

A. At that time they were operating the plant.

Q. So there—

A. I mean, I was operating the plant. I was doing it all. I had all the men in there. The only thing they were doing, they were paying the cement bill at that time.

Q. They must have been assuming the slag and sand bill?

A. I was paying for the slag and sand.

Q. So they were going to sell it to you, then you were going to have a new arrangement—

A. That's right.

* * * * * * * * *

Q. Tell us how you knew about Ragnar Benson and what was the source of your information?

A. Mr. Casey, it was well known they were going to build a mill at Allenport.

Q. How was it well known?

A. All through the mill, through the papers, everybody knew there was going to be a steel mill built at Allenport.

Q. They had known it out there quite sometime before August of 1951?

A. That's right, that's right

Q. The Dodge reports, which are in business?

A. That's right.

Q. Do you subscribe to those?

A. That's right.

Q. In that they said they were going to spend thirty-five or thirty-seven million dollars at Allenport?

A. That's right.

Q. So all you business men there in the territory were very much interested in how much work you were going to get out of it?

A. That's true.

* * * * * * * * *

A. Yes, I even knew before the 29th who was going to get the job because it was all through the steel mill who was going to get the work was Ragnar Benson.

Q. It was no secret, was it, before the 29th?

A. It was no secret before.

Q. Certainly and the people up in the Valley and in the mill who were interested knew that?

A. No. Just the people in the mill, some of the officials in the mill, it was no secret there who was getting the job.

Q. That was before the 29th?

A. I heard that before the 29th but nobody was certain.

Q. But it was a well founded rumor?

A. You know, anything can change in those contracts.

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A. It was sometime after the 29th, a couple of days in there after the 29th that I called him, Mr. Casey.

Q. Didn't you call him until you were sure and until after they publicly announced it?

A. That's right, that's right.

Q. Are you sure of that?

A. I am sure of that.

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Q. Then at a later time, when did you next contact Mr. Kassab?

A. Oh about—I don't know, something along in a week or maybe four or five days. I don't know. It was about a week after that.

Q. It might help you if you were sure that Labor Day was in the next week?

A. It was about a week or better after I called him again.

Q. Well, if we are assuming and I am assuming that that either on the 30th, 31st or the 1st, that would be a week then, that would be somewhere around September 8th or 10th, is that right?

A. It would be something along in there.

Q. Now, in that conversation what was that about?

A. What have you got, 2, 3, 4, 5, 6, 7, 8, 9 and 10?

Q. Isn't that right?

A. You are bringing in September.

Q. I start September over here on Saturday.

A. Oh, I see.

Q. What did you talk to him about when you called him about a week after?

A. I called him at the office. He had told me before to call him a little later on and I called him at the office to make an appointment. I wanted to come in that day to see him and he told me he was too busy.

Q. Did you have the contract then?

A. No.

Q. Did you talk to him about what?

A. I wanted to come in and talk to him about the contract.

Q. Did you go in and talk to him then?

A. No, he couldn't see me that day and told me he was busy and I asked him again if I could see him in the evening, if he was busy that evening. He said no he wasn't, he was going to be at home.

Q. So that's when you went out to his home?

A. That's the evening when I went to Canonsburg.

Q. Would you say, sir, that was during the week of the 10th when you went out?

A. It was a week or a little longer than a week when I called him because I didn't want to leave it slip by.

Q. You discussed out there what?

A. We discussed the contract.

Q. And in the course—you mean his contract or your own?

A. My contract.

Q. Did you discuss price at that time?

A. Yes, we discussed the price. We also discussed it whether I was capable of handling the job or not.

Q. What price did you discuss, sir?

A. Eleven-seventy-five.

Q. Is that the price—

A. That's the price we put in.

Q. Is that the price you originally bid this on?

A. Yes.

Q. Are you sure of that?

A. Sure of that.

Q. Do you have any notation to make you sure of that?

A. I don't have any of my records here.

Q. So that when you got out to Jake Kassab's house, you and your wife went out there sometime in that second week of September, you discussed the price, you put in the same price that you put in in the beginning and he said to you then what?

* * * * * * * * *

Q. I say, when before you left was it that he told you anything about the contract?

A. Yes, when I left, as I went to leave, he told me he said, "Bill, you have nothing to worry about, you have got it."

Q. "Bill, you have nothing to worry about, you have got it?"

A: That's right.

* * * * * * * * *

Q. Well, you delivered it then, did you not?

A. That's right.

Q. You say that was after the time that you were over to Jake Kassab's house?.

A. That's right.

Q. Did you deliver that small order of concrete?

A. That's right.

Q. Where did you get that?

A. At Belle Vernon.

Q. At—

A. At the batching plant.

Q. At the batching plant we are talking about here?

A. That's right

Q. You delivered it to the job where?

A. At Ragnar Benson's job in Allenport mill.

Q. Would that be say the 13th of September that that delivery was made?

A. I can't tell you.

* * * * * * * * *

Q. Did you deliver that $1,500 check to Nick Stirone in person?

A. That's right.

Q. When would you say that was?

A. Sometime in February, 1952.

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Q. You are not able to tell us then what that delivery was made for?

A. No. I am not.

Q. Who would know that in your organization?

A. I don't think anybody in my organization would. We weren't allowed in the Pittsburgh Steel during the pouring, not unless we had a breakdown and got a pass.

Q. Well, the first order, that had nothing started when you delivered the first, had there?

A. I had an idea of a mess that went in there for erecting their offices or something like that but I don't think the mill was actually started.

Q. When it first was in there, the first order it might have been for the office building?

A. It could have been.

* * * * * * * * * *

Q. Did you not say that at some date after you had gone out to Jake Kassab's house out in Canonsburg, that you received a small order and delivered same?

A. That's after, yes.

Q. After that. Then in that period between the delivery date of that order whenever that might be and the receipt by you of the actual contract, is that the time that you received the call from Mr. Dierker?

A. How is that?

Q. Well, with relation, sir, to the date you made the smal—delivered the small order over to Allenport of ready-mixed concrete, after that when did you first hear from Mr. Dierker?

A. After I had delivered the first batch of concrete.

Q. It was after that?

A. It was after that.

Q. And that was after a date which I believe you have said that you were out to Mr. Kassab's house, either the 8th or the 9th or the 10th of sometime in September, so it was after that?

A. It was after we made the first delivery to the Allenport or Ragnar Benson job.

Q. I understand, but that first delivery was after the time you had been out to Jake's house?

A. After I was to Jake's house.

Q. Now we establish this, in your discourse here, that after the date, whenever it was that you were out to Kassab's, you then delivered some concrete and after that delivery date and between the time that you received the formal contract, part of Government's Exhibit 10, was that the time that Mr. Robert Dierker called and said he wanted to see you?

A. I said it was between—after I had been to Jake Kassab's house and after I had made the delivery.

* * * * * * * * *

Q. There was some date in there that you delivered —take it this way. This contract is dated September 25, 1951; at some date in September prior to that date, you made a small delivery, is that right?

A. That's right.

* * * * * * * * *

Q. You tell us what is right with reference to that?

A. I went to Jake Kassab's house, then after that we had a small delivery made at the mill.

Q. I turned it around, sir, I am sorry, I put it backwards.

A. After that why that's when Robert Dierker called me.

Q. Before what other date did he call you?

A. I don't remember what other date.

Q. Mr. Rider, what we have then is that in your testimony this morning and now you say that between the date you delivered a small order to the mill of concrete and September 25, the date of this contract is when?

A. It was in between, yes, sir.

Q. That is one date we can establish on here, September 25, 1951, that's the date of that contract, is that right, concrete mixed with sand and slag?

A. Don't forget the flag.

Q. When Dierker, Bob Dierker called you, was it before that date?

A. It's in there somewhere.

Q. After the verbal order for the small load that you took over to the plant?

A. Yes.

* * * * * * * * *

Q. Let's go at it this way. Would you be willing to say to us now on the stand that it wasn't on a Sunday?

MR. TEITELBAUM: If the Court please, the man has testified two or three times he has no recollection.

THE COURT: That's right, he has, Mr. Casey. He doesn't know the date. He can't remember.

MR. CASEY: I am just asking him now, I am going to try to eliminate Sunday.

Q. If it is on a Sunday, it's on the 23rd or the 16th or whatever date is involved.

MR. TEITELBAUM: If this man has no recollection—

MR. CASEY: I am not asking him that now.

A. Mr. Casey, I don't know the date and I still can't answer.

Q. Does your plant work up there in 1951—did it work on Sunday?

A. No, we didn't work, it wouldn't be on a Sunday. Of course, it wouldn't be on a Sunday.

Q. Then we can eliminate at least the 23rd. So was it on that day?—Would you say it was on a Saturday?

A. I couldn't say.

Q. Then it was at sometime between the small order and the formal order, the 25th here, on one of these other dates, is that right?

A. Something along in there.

* * * * * * * * *

A. Oh, I have talked to Robert Dierker lots of times.

Q. Before that though, before that time?

A. Oh, a lot of times before that.

Q. And you knew his voice?

A. Oh yes, I knew it.

Q. You recognized his voice on the phone on that occasion at the North Charleroi office, did you not?

A. Oh yes.

Q. And what did he say to you?

A. He told me, he said, "Bill," I can't give the exact words, but he said he wanted to see me at the Belle Vernon plant, batch plant.

Q. When did he say that, later in the day?

A. Oh, I don't even know what time he told me to call, but I was only around the office for a little bit when I went to the batch plant. I had to wait on him about 15 or 20 minutes.

Q. If you would do that, Mr. Rider, it would probably be you stopped in in the morning, that would be a morning conversation? Wouldn't that be reasonable?

A. Mr. Casey, I still can't answer it. I don't know what time of the day it was.

MR. TEITELBAUM: I'll be glad to let Mr. Casey testify.

THE COURT: Mr. Casey, would you please not ask that question again? He's answered it at least a dozen times.

Q. You got the call before you went to the batch plant, whatever time it was?

A. I still don't know whether I was at the batch plant before and then went to the office or went to the office and hadn't got to the batch plant yet.

Q. He said, "Bill, I'd like to see you"?

A. I'd like to see you at the batch plant."

Q. At the batch plant. Then what did you do?

A. I fooled around a little bit at the office and went to the batch plant. My wife asked me where I was going, I told her. I said, "Dierker wants to see me."

Q. You went over to the batch plant?

A. That's right.

Q. Where did you go when you got over there?

A. My field office.

Q. Was Mr. Dierker there then?

A. No.

Q. How long were you over there before Dierker came?

A. I don't remember now. It was for a little bit. He hadn't got there yet.

Q. Mr. Rider, it was on the same day, the telephone call and the meeting?

A. Everything was on the same day.

Q. When you got there, the call evidently wasn't from the batch plant to your office in North Charleroi?

A. No, it must have been along the road or Dierker's office or something. I don't—It could have been from their office and they went out and got a cup of coffee until I got there. I don't know.

Q. In any event when you got there, they weren't there?

A. That's right.

Q. At that time, I think Mr. Teitelbaum asked you on that day you had the conversation and bearing in mind that you are now over to the batch plant after having received the telephone call, at that time you never met Nick Stirone?

A. Not that I ever recall I ever met Nick Stirone.

Q. All right now, tell us about Mr. Robert Dierker coming there.

A. Tell you about Robert Dierker calling there.

Q. Yes, coming there.

MR. TEITELBAUM: If it please the court, how about a question?

MR. CASEY: I said, please tell us about Mr. Robert Dierker coming there.

MR. TEITELBAUM: I don't know what he means either.

BY THE COURT:

Q. Do you understand the question, Mr. Rider?

A. Not unless he wants me to answer—

THE COURT: Make your question more specific, Mr. Casey.

BY MR. CASEY:

Q. Did Mr. Robert Dierker come to the batch plant in an automobile?

A. He did.

Q. Would you please tell us about same.

A. He came there in a car.

Q. How did you know that?

A. I could see.

Q. Were you standing out waiting for him?

A. I was looking for him, yes.

Q. Where did he go?

A. He drove halfway between my field office and their shipping office.

Q. All right now, what?

A. And I walked over to the car and there was a man sitting in the car. He introduced me to Nick Stirone. Of course, I knew who he was when I walked up.

Q. You had seen him before?

A. Oh yes.

Q. But you hadn't been personally acquainted with him, as best you can recall?

A. I don't ever recall meeting him. I have been around him, contractor's banquets, seeing him, every place.

Q. Would you say when you meant you had never met him, would that be the equivalent of saying you didn't know him at that time?

A. You mean I didn't know him at all?

Q. Yes, know him?

A. Oh yes, I knew who he was..

Q. You had no acquaintanceship with him?

A. Oh no.

Q. Would you say if you said you knew someone or did not know them, that it would relate to acquaintanceship rather than just knowing who they were?

A. How is that again?

Q. When you would say if you did, that I knew someone, what would you mean by that?

A. Well, you knew somebody.

Q. Yes, that you were acquainted with them?

A. Well, you don't need to be—that isn't you are friendly with them or anything like that. You just know them. Just like I know you. I have never met you before either.

Q. Is that how you knew Nick Stirone, just casually?

A. I have seen you today for the first. I mean, since this trial started. That's the first time I have ever seen you.

Q. You have had some conversation with me. Is that what you mean then, to know a person, you would have to have conversation with them?

A. Oh yes, you would have to have conversation with him to really know somebody.

Q. But you didn't know Nick Stirone as of that day well enough at least to have any conversation with him?

A. Not for conversation.

Q. You just knew who he was?

A. That's right.

Q. Now sir, at the bankruptcy hearing, your testimony was being taken relating to your assets, under oath. Were you not asked this question and did you not answer as follows: "Question: You never dealt with Mr.

Stirone before? "Answer: Knew him for a long time. I have had dealings with Nick Stirone in the construction business but this is the first time I had to do anything like that."

A. Mr. Casey, I have had—

Q. Just a minute, please. I am asking the Court, the issue is whether or not that question was asked him and whether he answered it as I read it.

THE COURT: Answer the question yes or no then, Mr. Rider.

A. If it is in the testimony I said it then.

Q. Under oath?

A. I guess I was under oath.

* * * *

Q. On that occasion then you were introduced to Mr. Stirone by Mr. Robert Dierker?

A. Robert Dierker, at the Belle Vernon plant.

Q. Mr. Dierkeer was seated in the front seat, was he not, of the automobile?

A. That's right.

Q. And Mr. Stirone in the back?

A. Stirone in the front.

Q. In the front?

A. Sitting beside Mr. Dierker.

Q. Then you got in the back?

A. That's right.

Q. Is that how they drove up when you saw them from the front of your trailer?

A. I wasn't in the car when they drove up.

Q. I say in the trailer. You were standing in front of it, you say?

A. Yes.

Q. You could see them driving up between the two places?

A. That's right.

Q. Robert Dierker was driving, was he?
A. That's right.
Q. And another man was sitting alongside of him?
A. That's right.
Q. How far away were you when they drove up?
A. Oh, halfway, between halfway between the courtroom here, half the distance.
Q. From the back wall?
A. From the—yes.
Q. Would that be about 50 feet?
A. No, it would be about 35, 40 feet.
Q. Anyway it was close enough for you to recognize Dierker?
A. Well, I knew Dierker's car when he pulled up.
Q. Is that how you recognized it was him, by virtue of his car?
A. Of course, wearing glasses and he is a tall man, there was no mistake.
Q. There is no mistake?
A. No mistake.
Q. Now, the other man you didn't know him—
A. No, I didn't.
Q. —from that distance?
A. Not until I got close to him.
Q. When you got close to him, you could tell it was Nick Stirone?
A. Then I recognized who it was.
Q. Then you got in, then you had pleasantries about the day, it was a nice day and other matters?
A. We talked, that's right

MR. TEITELBAUM: Your Honor—

THE COURT: Just a moment, I have ruled out that sort of question before so please abide by the Court's ruling. Proceed with the questioning.

MR. CASEY: That's a leading question, sir, and I ended up is that right. That's my question.

THE COURT: I am not so sure it's a leading question.

Q. When you got over to the car, sir, please tell me what you did.

A. I got in the car. Mr. Dierker told me to get in the car. Of course, he introduced me to Nick Stirone. I got in the car. We chatted for a few moments. Mr. Dierker said Mr. Stirone had something to tell me.

Q. All right. How long after you got in the car did Mr. Dierker say that?

A. I couldn't tell you.

Q. Just after the pleasantries, is that correct?

A. We weren't there very long.

Q. I want you to tell us then, after Mr. Dierker had said that, Mr. Stirone said something, is that right?

A. Mr. Stirone told me that he knew that I had the Ragnar Benson contract. Then—

Q. Just one moment, I will break in. At that time when this conversation took place, you did have the contract, is that right.

A. I had the verbal contract from Jake Kassab given to me at his home and had already made deliveries of concrete to the Allenport mill, for Ragnar Benson.

Q. But you had not received the formal written contract, part of Exhibit 10?

A. Mr. Casey, I can't—I don't know.

Q. Now, Stirone said to you that he knew you had the contract?

A. Had the contract.

Q. What did you say?

A. I told him I did.

Q. Did you tell him from whom you got it, did he ask that?

A. I don't think so. I don't think we said anything about it.

Q. What was next said by either you or Mr. Dierker or Mr. Stirone in this automobile?

A. Mr. Stirone told me he wanted 50 cents on every yard of concrete that went into the Allenport mill of Ragnar Benson.

Q. At that time, had you had any conversation as to how much you were going to receive for the concrete going into the mill?

A. How is that again?

Q. When you had this conversation before Mr. Stirone said this to you about 50 cents a cubic yard, had there been any discussion as to how much you were going to get for delivering it over there?

A. No indeed.

Q. It had not been mentioned?

A. No indeed that price had all been settled.

Q. Had what?

A. That price had been settled before with Ragnar Benson. I had already had the contract. I already had the verbal contract from Ragnar Benson.

Q. You did not tell these two men how much you were going to get for it?

A. No, sir.

Q. So Mr. Stirone said that he wanted 50 cents a cubic yard for all the concrete that was delivered into that plant?

A. That's right.

Q. Then what did you say?

A. I asked him what for?

Q. All right, what did he say?

A. He told me he would keep me out of labor trouble.

Q. Is that what he told you, right away?

A. The first thing he told me, if I didn't pay - I got mad he said if I didn't pay him, I wouldn't be able to hold on to the contract.

Q. Who said that?

A. Stirone. Then I got out of the car,—I got mad, I got out of the car, walked back towards the other plant. Mr. Dierker got out and took me by the arm and told me, he said, "Bill, you have got to go along with this." I said "Bob, I can't." I said, "The profits are going to be shaven so, that I am not going to be able to make out." He says, "You have to. That's all there is to it. You have got to go along." He says, "I will try to make some kind of arrangement with the price on material to take care of things."

Q. When this matter came up first about 50 cents, as best you can recollect, tell us the exact words of Stirone relating to what he would do if you didn't pay the 50 cents?

A. What he would do?

Q. Yes.

A. I can't give you the exact words. I am giving you the words as close as I possibly can give them to you.

Q. The substance of them, what were those words?

A. He told me that I wouldn't be able to have the contract.

Q. That you wouldn't be able to have the contract?

A. That's right, I wouldn't be able to keep the contract.

Q. Wouldn't be able to keep the contract?

A. Keep the contract.

Q. Did you understand that to mean the contract, the verbal contract that you had with Jake Kassab out at his house?

A. That's right.

Q. Did you tell him that Jake Kassab had already given you that contract?

A. We could have had the other contract in the office, as far as I know. The other contract could have been sent in. I wouldn't know whether it was sent in or not.

Q. But in any event you hadn't seen it yet?

A. Hadn't seen it yet but I had called for it.

Q You mean your office, you called for it?

A. No, I called Ragnar Benson for it.

Q. You were anxious to have it sent out?

A. That's right.

Q. Then after that you got mad and said you wouldn't do it?

A. That's right.

Q. You got out of the car?

A. That's right.

Q. Mr. Robert Dierker came out and took you by the arm and said you had to, that he'd work out something with you and make some adjustment?

A. That's right.

Q. Then what did you do?

A. I had to agree then.

Q. How did you agree, what did you say, O.K.? Did you go back, Mr. Dierker dragged you back or did you walk back with him or what did you do?

A. We stood there for a little bit and talked and then went back to the car.

Q. Stirone was still in the front seat?

A. Yes.

Q. Did you get back in the car?

A. No.

Q. You stood there and talked to him?

A. I don't know whether Stirone asked me what we had decided on or Mr. Dierker said I had decided to give him the 50 cents. I just don't recall that. I know we told him we'd give the 50 cents on every yard. Stirone promised me he would keep me out of labor trouble.

Q. Is this after you got back there?

A. Yes, it was after we got back there.

Q. That was after you agreed on the 50 cents?

A. Yes.

Q. You agreed to the 50 cents because Robert

Dierker wanted you to when you were standing outside of the car?

A. He had a lot to do with it.

Q. You were his tenant and buying things from him that you would need in connection with carrying out any contract with relation to Ragnar Benson, is that right?.

A. That's right.

Q. When you stood outside the car, Nick Stirone was in the car, how far away from it did you walk with Mr. Dierker, out of earshot?

A. Oh yes. Yes, we walked I suppose 25 or 30 feet, maybe 40 feet. I don't know. I was really mad.

Q. How long a time did you stay out there before you went back over to the car?

A. Oh, I don't know. I couldn't tell you how long we stood there, not too long. We were there long enough to chat the thing over.

Q. I believe you said on direct examination that "Dierker put pressure on me?"

A. Yes.

Q. Is that when the pressure was put on you, when you were out there?

A. That's right.

Q. He told you that you ought to do it and the arguments and then you gave in?

MR. TEITELBAUM: Just a minute, if the Court please that's the same type of argument.

THE COURT: Are you objecting?

MR. TEITELBAUM: I am objecting.

THE COURT: Objection sustained.

Q. What, sir, did you mean when you stated today that Dierker put pressure on you, this morning?

A. By telling me to go ahead. I'd have to go ahead and pay it.

Q. He told you that by mouth?

A. That's right.

Q. Then how long did that take you were you still mad and said you wouldn't?

A. Well, I suppose we were there maybe 10 or 15 minutes. I can't give you the exact number of minutes. We could have been there five minutes, we could have been there ten minutes, we could have been there 20 minutes, so far as I know.

Q. My notes say, sir, and I am just asking you, my notes have that you said I finally gave in. All I ask you now, what do you mean by "finally"?

A. I gave in to him.

Q. You mean by that that was after an extended argument with him?

A. That's right.

Q. What else, if anything, was said after you said O.K. or how did you tell Mr. Stirone about the 50 cents?

A. How is that?

Q. How did you tell Mr. Stirone about the 50 cents that you had got?

MR. TEITELBAUM: Objected to as repetition. It's been testified to.

A. I believe I already testified.

MR. CASEY: All right.

THE COURT: Do you withdraw the question?

MR. CASEY: Yes, sir.

THE COURT: All right.

Q. When you went back to the car, how did you go back and who was with you?

A. Robert Dierker was with me, but I don't know how we went back. I don't know whether we went back arm in arm. I doubt it very much.

Q. When you went back to the car when you told Stirone anything about 50 cents, where was Dierker?

A. Dierker was alongside of me.

Q. He was close enough to hear you say that?

A. Oh yes.

Q. And hear the conversation?
A. Dierker heard the conversation.
Q. Both yours and Mr. Stirone's is that right? Was he close enough to hear that?
A. Both what?
Q. Both your conversation, your voice and Mr. Stirone's when—
A. You mean—Oh yes.
Q. All right, after the matter of the 50 cents was disposed of, what next was said by anybody?
A. What was said? Payment. Payment was said. How we were going to pay for it. Nick brought up something about cash and I dropped it and I said everything had to go through the books.
Q. Let's go back a step. Was it after you came back to the car and Mr. Dierker was alongside of you, was it then and you made some comment about the 50 cents and said, agreed to it, then the next matter that was taken up was how payment was to be made, is that right?—Now, the witness shakes his head affirmatively.
A. Yes, yes.
Q. After the question of payment was brought up, what, if anything, did anyone say?

MR. TEITELBAUM: If it pleases the Court, that's repetitious and I objected to. The man has testified not two minutes ago.

THE COURT: Let him answer it once more, and this is the last time I will permit that question to be asked.

Read the question.

Q. (Question read.)
A. Mr. Stirone mentioned something about cash, and I said, everything has to run through the books, through our office. We'd have to drop it right there.
Q. What did he say to that, any answer to that?
A. I don't think he said anything.

Q. Did you discuss at that time how anyone—Mr Stirone was to know how much concrete was delivered?

A. You mean how much concrete was delivered at that time?

Q. Yes.

A. I don't think there was anything brought up about it, about how it was delivered.

Q. Was anything brought up at that time as to when—.

A. Oh yes, there was too about it to be paid every month. That was brought up.

Q. To be paid by check every month?

A. I didn't even say check. I said everything had to run through our office.

Q. But you didn't pay any cash to Mr. Stirone?

A. Absolutely not.

Q. It was all in check?

A. That's right.

Q. Then that matter was settled about it's to be paid every month and it was not to be paid in cash, it had to be run through your books. What, if anything, else was said then?

A. I don't think there was anything else said.

Q. I thought you testified a little while ago there was something about labor, he was going to keep you out of labor trouble?

A. Oh, he was going to keep me out. I had answered that before.

Q. When did he say that?

A. He said that when Mr. Dierker and I had came back and agreed to pay him the 50 cents a yard.

Q. That was after the little walk you and Mr. Dierker took?

A. That's right.

Q. You are sure of that now?

A. Absolutely.

Q. You couldn't possibly be mistaken about that?

A. (Witness shakes head.)

Q. We will establish it this way then. How soon before these gentlemen drove away, if they did, was that statement made with reference to keeping you out of labor trouble?

A. How is that?

Q. I say, was that one of the last things that was said, just before you broke up?

A. Oh no, we were talking about payments. That was said before we talked about payments.

Q. It was after you and Dierker had come back to the car?

A. That's right.

Q. Before you walked away, the only thing about the 50 cents a cubic yard at that time, Mr. Rider, was that if you didn't pay 50 cents a cubic yard, Mr. Stirone would see that you didn't keep the contract, is that right? Is that what you are telling us?

A. Mr. Stirone, if I didn't pay the 50 cents, Mr. Stirone said that I wouldn't be able to keep the contract.

* * * * * * * * *

Q. That's the first time that you had any idea about a shakedown?

A. That's the first time, yes.

Q. Mr. Dierker—

A. But I couldn't imagine what he was coming out there for, regardless

Q. Mr. Dierker didn't tell you why they were coming out or who was going to be with him?

A. No, he did not.

Q. All right now. You did deliver concrete to the Ragnar Benson plant in regular quantities over a period of the latter part of October, November, December of 1951 and then through 1952 and 1953, is that right?

A. We delivered concrete whenever they'd call for it.

Q. You had one contract first for the hot roll mill and you knew the amount of concrete that was going to be involved then?

A. Oh no, I never knew. I mean the concrete changed, the amount of concrete changed in that mill. It wasn't all the same. It could have been over, it could have been less.

Q. In your original specifications, weren't there about 25,000 cubic yards involved?

A. I don't just remember now.

Q. Anyhow during the course of construction,didn't Pittsburgh Steel decide to double the size of their plant that meant more concrete?

A. Well, there was one that meant more, there was one meant less. You didn't know from one day to the next because they were making new changes to the plans all the time.

Q. In any event with Ragnar Benson did you make any other contract relating to the furnishing of concrete on the new plants that were added in 1952?

A. I did everything at Ragnar Benson. I supplied all the concrete for what Ragnar Benson did at Pittsburgh Steel.

Q. Did you only do that on only one contract or did you have two with Ragnar Benson?

A. No, I only had the one order.

Q. That's the one here, part of Exhibit 10, the September 25, 1951?

A. (No response.)

Q. After the $1,500 check, that you say that you delivered to Mr. Stirone personally how were the rest of the checks or money orders sent?

A. We never sent any money order, Mr. Casey.

Q. All checks?

A. Everything went by checks.

Q. Who signed all of those checks?

A. My wife signed all those checks.

Q. All except—

A. All except the one that I had signed.

Q. That you took along. How were those checks sent to Mr. Stirone? Did your wife do that?

A. You mean how did he get them or what do you mean?

Q. Were they delivered by Mrs. Rider or messenger?

A. Oh no, they were all mailed in the mail except this one.

Q. You know enough about the office to know those were mailed?

A. Well, I think I mailed some of them.

Q. You did say that, didn't you, your wife would make them out but you mailed them?

THE COURT: He testified he mailed them to Miami and he testified he mailed them to New York.

Q. Did you mail one to Miami, sir?

A. Yes, one went to Florida, one went to the Waldorf—I mean, some went to the Waldorf-Astoria, New York.

Q. Did you mail those, did you say?

A. Oh, I don't know.

MR. CASEY: If Your Honor please, he says he doesn't know whether he mailed them.

A. I don't know which ones I mailed but I do know I mailed checks. I know where some of them went. If you started in this small order at sometime before September 25, 1951, then there was a time after you got that formal contract that you started to deliver concrete daily or weekly or some regular period of time over at the Allenport job, was there not?

A. Whenever the Ragnar Benson Company would call, that's when we delivered. They generally called in the evening or maybe called the first thing in the morning or something. If they had a big pour, we had to get ready for it. A lot of times we have poured as high as a thousand yards.

Q. On those occasions you'd have notice?

A. I had to get geared up for it, yes.

Q. Now, if you delivered then all during the month of October, then you would bill Ragnar Benson after the month was over, is that right?

A. Yes. Well, Mr. Casey, I had nothing to do with the billing now. I don't know anything about the office, so I can't answer that.

THE COURT: Just a moment. I think we will have to adjourn until ten o'clock Monday morning.

(Whereupon an adjournment was taken until 10:00 o'clock, a.m., Monday, June 10, 1957.)

MORNING SESSION

June 10, 1957
10:35 a.m.

WILLIAM G. RIDER resumed the stand.

Cross Examination (Cont'd) by Mr. Casey:

Q. Mr. Rider, it is my recollection that on Friday we talked last about the billing out of the office for the concrete poured on the Ragnar Benson job. I think you said that you didn't know anything about that, that someone else in your organization handled it?

A. That's right.

Q. Now, after you say that Mr. Dierker and Mr. Stirone came up to the Belle Vernon batch plant and you had this conversation in the automobile and you got out and came back, when did you next talk to Mr. Stirone?

A. I believe he called me on the telephone. I believe he called me on the telephone and told me he didn't want any money until after the first of the year. It was in February.

Q. Can you tell us about when that was?

A. No, I can't.

Q. That didn't occur when Mr. Dierker was there, that was later?

A. That was afterwards.

Q. You are sure of that?

A. I am sure he called.

Q. That would be at sometime between the date that your conference with Mr. Dierker and Mr. Stirone and the time you say you took the check to his office?

A. It would be the end of the year.

Q. At the end of 1951?

A. It would be towards the end of the year.

Q. Is that the first conversation that you had with him at all was toward the end of the year, nothing in between?

A. As far as I remember.

Q. Well, you'd remember if there was any important conversation with him during that time, wouldn't you, sir?

A. I don't believe I ever had any important conversation except the one at the car, at the Belle Vernon plant.

Q. So the other conversations like toward the end of the year 1951 was only about the money, that he didn't want any money in '51, is that right?

A. That's right.

Q. At that time, had he been furnished, do you know, by your office with any listing as to the amount of concrete that had been furnished Ragnar Benson?

A. I couldn't tell you that.

Q. Your wife would know that, is that right?

A. You'd have to ask her.

Q. As far as you are concerned, you didn't give him any?

A. I didn't.

Q. Well now then, between the time in the car up at Belle Vernon and the time you say you took the check over to Nick Stirone's office, at his union office you said back of the Carlton Hotel, you had this conversation with him about not wanting any money in 1951, but wait until the next year. You say that was about the end of the year?

A. Sometime in there. I can't set dates. I don't know the dates.

Q. You had no other conversation with him until you walked into his office, is that right?

A. I don't ever recall I had any conversation with him.

Q. Now, when you brought that first check for $1,500, Defendant's Exhibit A, was there any other thing with it, any explanatory paper or note?

MR. TEITELBAUM: If it please the court, objected to as repetitious. That's been asked several times. He said he didn't know.

THE COURT: That's true, Mr. Casey.

MR. CASEY: I thought maybe his memory might be better on Monday.

THE COURT: All right, we will let you ask it once more.

A. I told you I didn't remember.

Q. Your memory is no better today than it was on Friday?

MR. TEITELBAUM: I move that be stricken.

THE COURT: Motion is granted. I will ask

Q. Well now when—

THE COURT: I will ask the jury to disregard the remark.

Q. You did have the check, do you remember that?

A Oh yes, I remember the check.

Q. And the check was signed by you, it was made out by your wife?

A. That's right.

Q. You said that you looked up Mr. Stirone's office in the telephone book?

A. That's right.

Q. Do you recall what address you found?

A. No, I don't.

Q. You say it was in back of the Carlton House. Can you describe it?

A. It's in back of that street somewhere, sir. I don't know the name of the street.

Q. You didn't inquire from anyone just from the telephone book?

A. (Witness shakes head.)

Q. Was it on the first floor, his office?

A. No, I'll tell you. You go up a winding old steps. There's a bunch of men standing in the hallway and up top of the steps, I don't know what they are there for, maybe they are waiting for employment. When you get to the door, you hammer on the door and somebody looks through a little hatch to see who you are. Then you give your name and then you are entered into another door to a plush office.

* * * *

Q. At that meeting that you say up in Belle Vernon in the automobile, was there any mention as to when money was to be paid?

A. Not when, but we brought it up about cash.

Q. Yes.

A. Then I said everything had to run through the company books.

Q. But no mention was made up there as to when it was to be paid?

A. I don't remember whether it was to be paid--I think it was to be paid every month. I think that's what we agreed on or something.

Q. At the time?

A. That's right.

Q. Then you did start at sometime in 1951 to deliver concrete to Ragnar Benson?

A. That's right.

Q. Did you pay every month then?

A. No.

Q. Mr. Stirone did not call you up until that date?

A. Oh yes, he called before that. He called before. He called in 1951. He didn't want the money in 1951 and he said, it's on account of taxes. I'd rather have it, but I'd rather pay it at that time.

Q. That was only one conversation toward the end of the year, wasn't it?

A. It was something in there somewhere.

Q. If you delivered concrete during the month of October, 1951, at the end of that month you had no—you didn't send any check to Mr. Stirone for October?

A. He told me he wanted me to send them. He told me when he wanted them.

Q. Where was that conversation?

A. That's when he called me.

Q. That was toward the end of the year?

A. It was in there somewhere. I told you along the end of 1951. It could be two months, it could have been one month.

Q. At least during 1951, Mr. Stirone didn't ask you for any delinquent payments?

A. Not in '51, no.

Q. Well now, after this conversation you said you had with him in '51 and then you have 1952. Did you receive calls in '52 prior to the date that you say you took the check over to his office?

A. I can't say that.

Q. What was the occasion of your taking the check over, just want to get it paid to date? To some date?

A. I don't remember. I believe I was coming into town that day and I just bring the check with me.

Q. Was it during this '51 period that you say Mr.

Dierker called you on the phone and reminded you about these payments due?

A. In 1951, oh no.

Q. That didn't occur in '51, any of that stuff?

A. No.

Q. That was after the year 1951 and probably after you had delivered that first check, is that right?

A. Oh yes.

Q. So that, Mr. Rider, any calls concerning the delinquency of the account came with regard to the other checks, other than the one that you delivered and after that?

A. It came after, it came after the first check.

Q. Well, there was no payment, was there, from you to Mr. Stirone from February 28, 1952 until the following September, 1952?

A. Give me that question again.

Q. I withdraw the question. You didn't pay Stirone anything between March the 1st, 1952 and September of 1952, the intervening five or six months?

A. I still can't answer that question.

Q. But was it during that period that you had the calls from Mr. Dierker relating to the checks?

A. I still can't answer that question.

Q. Who can, if you know?

A. It'd have to be on dates whenever the checks were signed.

Q. Didn't you tell Mr. Stiles and John J. Sweeney from the F.B.I. on this occasion in November of '55, I think you said they came out to your house that he Stirone, "insisted that I pay him in cash at the end of each month after I had received payment from Ragnar Benson for the concrete I supplied this company?"

A. I told you once, he asked for cash and I told him it'd have to run through the company books.

Q. I am just asking you. Did you tell the F.B.I.

that when they were there?

A. Whatever is in that agreement, that's what I told the F.B.I.

Q. That agreement is the one that I have just had in my hand, which is identified as Defendant's Exhibit C?

A. It was the agreement I looked at a while ago.

Q. Look at it again.

A. I don't know whether you changed it on me or not.

Q. Is that it?

A. That is it.

Q. How many times would you say that Mr. Dierker called you?

A. Oh my, I wouldn't know.

Q. But more than once?

A. Yes.

Q. Is that right?

A. Oh yes.

Q. Well now, in that statement I notice you say—you were giving that statement voluntarily, is that right?

A. That's what's in the statement.

Q. Is your testimony here voluntary?

A. I am telling what I know.

Q. You are coming here voluntarily?

A. I say I am telling what I know.

Q. You are not forced in any way to do it?

A. I am not being forced to do anything.

MR. TEITELBAUM: If the Court please, Mr. Rider was served with a subpoena. There's no question about that. I don't believe that's what Mr. Casey is talking about anyway.

* * * *

Q. Is that right?

A. Mr. Casey, when you were being hounded with Mr. Stirone, Mr. Dierk and Mr.—well, the secretary and treasurer of Duquesne Slag Company, Mr. Myers, and some other ones and be hound and hound day after day, I became a sick man. I had to do something so I decided to take a gamble and I lost.

Q. To the tune of $15,000?

A. I don't think it was $15,000, not that I remember, I spent $15,000 at gambling.

Q. Well, it was a substantial amount?

A. It was around twelve or thirteen thousand, in there some place.

Q. What about Mr. Myers? Was there a Mr. Bragdon too at that time?

A. Mr. Bragdon not at that time. I don't remember whether Mr. Bragdon was in the company in 1950 or not. No, he wasn't with the company. Mr. Myers was with the company.

Q. Mr. Myers, he wanted the money that was due Duquesne Slag on that agreement?

A. That's right, at the same time they were demanding me to pay Stirone too.

Q. Was Myers doing that also?

A. No, Myers wasn't.

Q. He was asking for the Duquesne money?

A. That's right, and the president of Duquesne Slag was on my back for Stirone.

Q. And he kept calling you and asking you to pay Stirone the money?

A. Yes, and Stirone was on my back.

Q. What period of time was this?

A. What period?

Q. Yes, where was the time?

A. Oh, I can't mention the time.

Q. It wasn't before we have established, before February 28, 1952, the day you said you delivered that first check?

A. It was after the first check.

Q. Was it between the time after the first check and the next check in the fall if it was in the fall of 1952?

A. I told I couldn't answer any dates. I won't answer.

Q. Most of these calls that you got if we eliminate Myers now. He was on your back as you say, about the amount of money that you owed Duquesne Slag Products Company and during that period that was quite sizeable, wasn't it?

A. Many a time I had Duquesne paid down, then it would jump up. My bills with Duquesne would fluctuate. I mean, they'd go up and down.

Q. Well now, here according to Government's Exhibit 22, as of August the 31st, 1951, you owed him $19,923.07. You hadn't paid Nick Stirone any money at that time, had you?

A. I can't answer this at all.

Q. You hadn't even met him on August 31, 1951, had you?

A. How is that again?

Q. I say, you hadn't met him or didn't know him as of that date?

A. Of what date?

Q. August 31, 1951?

A. I don't know. August?

Q. August, yes.

A. I told you, Mr. Casey, I can't set a date when I met him.

Q. You have testified here under direct examination. "Question: At the time you went to Mr. Kassab's house, had you ever met the defendant, Nicholas Stirone?" And you answered no. Now, you told us here at the time you went to Jake Kassab's house, was sometime—

A. Mr. Casey, would you separate the calendar? Why run the calendar all together and confuse me?

Q. I will be glad to do that at recess.

A. That's fine.

Q. You said under direct examination you didn't know him at the day you went to Jake Kassab's house?

A. I said I knew of him.

Q. "Question: At the time you went to Mr. Kassab's house, had you ever met the defendant, Nicholas Stirone?" "Answer: No."

A. That's right.

Q. Whatever date that was, you hadn't met him before that?

A. That's right.

Q. If that date was after August 31, 1951, you hadn't met him on August the 31st, the date you owed the Duquesne Slag Products Company almost $20,000? That's what we are getting at.

A. After August the 31st?

Q. Yes.

A. No, I hadn't met Nick Stirone after August 31st.

Q. But as of August 31st, you owed the Duquesne then $20,000?

A. Well, we could owe Duquesne $70,000 and then it would drop down to practically nothing and then back up. It was never paid off. The material I was running it was terrific.

Q. You did then after—so if you did by this Exhibit owe them $20,000—

A. Mr. Casey, you couldn't—you had to be running material when you are paying eight and nine thousand dollars a year for rental on a piece of property, wouldn't you, and then paying at the rate of 15 cents a barrel for every barrel of cement went through the bin.

Q. Certainly, it was a big item?

A. That's right.

Q. They were after their money, weren't they, the Duquesne Slag Products people?

A. I don't think the Duquesne Slag Products people were after money at that time.

Q. You went out and you borrowed $20,000 from the Peoples First?

A. I borrowed lots of money from the Peoples First. you can look up in my—I have had several hundred thousand borrowed from the Peoples First.

Q. During the course of this matter from the Ragnar Benson job at Allenport, is that when you borrowed this money?

A. I had money borrowed a lot of times for construction work.

Q. How about this time?

A. I couldn't tell you.

Q. These records show that from the August date when you owed, August 31, '51, when you owed them almost $20,000 that you still owed them that on March the 1st and is that the time that Mr. Dierker or Mr. Myers was calling you about the payment?

A. I still can't answer that question.

Q. Well now then, between those two dates Mr. Dierker did not call you about paying any money to Stirone, did he, between the date of September the 1st say, 1951 and February 8, 1952, the day you said you took that check over to the union office?

MR. TEITELBAUM: If it please the Court, that's repetition. That's been said ten times.

THE COURT: It is repetition.

Q. When then did Mr. Dierker make any telephone calls to you with reference to payment to Nick Stirone?

A. I still can't fix the date.

MR. CASEY: If the Court please, I think I am entitled to try and fix it, whether repetitious or not.

THE COURT: He has told you many times he couldn't fix the date.

Q. Put it this way: Can you fix a date with reference to the last call that you received from Mr. Dierker with reference to someone else's account other than the Duquesne Slag?

A. I still can't fix a date.

Q. You can't tell us how many calls?

A. I know there was a lot of them.

Q. You have testified that you mailed checks to the Waldorf Astoria, I believe, in New York, you mailed some of them yourself, I believe you said?

A. I would take the letter to the mail box.

Q. With reference to Dierker, was it after or before you mailed any of those checks in point of time?

MR. TEITELBAUM: Now, if the Court please, the Government counsel is sitting here in answer to my questions and throwing his hands up and walking—

THE COURT: There is nothing the Government's counsel is doing, Mr. Casey, that you need be concerned about.

MR. CASEY: This jury is concerned.

THE COURT: Mr. Casey, would you please proceed and ask the questions of the witness? Government's counsel is acting as a lawyer should act.

MR. CASEY: If the Court please, I'd like to put upon the record when I ask a question in cross examination of this witness, the Government counsel throws his hands and with a look of mocking indignation, and I want it placed upon the record.

THE COURT: You have it on the record. Now proceed and ask your question.

* * * * * * * *

BY MR. CASEY:

A. I don't make up income taxes.

Q. Do you know whether or not a business deduction was allowed or did you claim a business deduction?

A. Mr. Casey, I am an outside man. I am not in the office.

Q. Do you still have your returns, copies of your returns for the years '51, '52 and 1953?
A. Do I have them?
Q. Yes.
A. Yes.
Q. You say yes?
A. Yes.
Q. Where are they?
A. They are in this courtroom.
Q. You have them with you?
A. My wife.
Q. Oh, I see, all right.
Q. That's all, sir.

Redirect Examination

BY MR. TEITELBAUM:

* * * * * * * *

MR. TEITELBAUM: I think Mr. Casey went into that bankruptcy proceeding. He asked even a question as to whether Mr. Rider was forced to give this thing. I want to bring out nobody from the Government was even present and that was the first time it was brought up at the bankruptcy proceeding—

MR. CASEY: If the Court please—

MR. TEITELBAUM: And Mr. Casey knows it, because he read the statement.

MR. CASEY: If I may put my position in. The bankruptcy proceeding was under oath and the only purpose was to show a prior inconsistent declaration made under oath. The reason for making it or nothing—

THE COURT: The objection is sustained.

Q. Mr. Rider, did you in the course of your bankruptcy proceeding make a public statement under oath concerning your payments to Nick Stirone?

A. That's right.

Q. Do you recall when that was?

A. No, I can't, I can't recall the date.

Q. Was it before or after the first time you ever saw Mr. Stiles?

A. Oh, it was before I saw Mr. Stiles.

Q. Was any F.B.I. agent present during the bankruptcy proceeding, to your knowledge?

A. Not that I know of.

Q. You have testified as to these conversations with Mr. Dierker and Mr. Stirone and were subjected to cross examination on it. I want to ask you this: Had you heard of Nicholas Stirone prior to your meeting between he and Mr. Dierker?

A. Oh yes, I have heard of Nick Stirone through the contractors, the Contractors' Associations, I mean contractors' banquets, everybody knew Stirone.

MR. TEITELBAUM: May I have that statement that you read to Mr. Rider on cross examination in the bankruptcy proceeding?

MR. CASEY: I only have excerpts from it.

Q. Mr. Casey asked you if you hadn't been asked if you ever dealt with Stirone before and your answer was, "Knew him for a long time. I have had dealings with Nick Stirone in the construction business. This is the first time I have had anything to do like that." Mr. Casey insisted you answer yes or no when you wanted to make an explanation.

MR. CASEY: I object to any explanation. It's either he did or didn't say it under oath.

THE COURT: Objection overruled.

Q. Would you answer—would you give the explanation of that now that you wanted to make?

A. Of course, we had dealings. I mean, not me direct or my company direct but we still had dealings with Stirone's union through the Constructors' Association.

We belonged to the union.

Q. Now, what did you know about Stirone in the past? What was in your mind concerning him, his reputation?

A. Well, everybody knows Nick, he's got a lot of power.

MR. CASEY: Objected to as not redirect examination. I move it be stricken from the record.

MR. TEITELBAUM: It seems to me that is right in the question that Mr. Casey asked. He asked him whether he knew him and in explanation I asked him what he knew.

MR. CASEY: If the Court please, counsel for the Government said ten times during the direct examination of this witness as of this date, did you know Nick Stirone, and he said no. So I questioned him with reference to what he meant by knowing.

THE COURT: That is true. That was his testimony Mr. Casey.

MR. CASEY: Then I produced, I asked him whether or not under oath he did not testify as I asked there and he said that he knew him for a long time. My point is that it's a prior—

THE COURT: Now he is giving his explanation.

MR. TEITELBAUM: Right.

Q. Then the testimony was you knew him as a powerful man?

A. Yes.

MR. CASEY: At this time I object to that as not being redirect examination, not a basis as a conclusion.

THE COURT: Objection is sustained. I ask the jury to disregard the question and the answer.

Q. Why did you agree to pay Stirone this money?

MR. CASEY: Objected to as not redirect examination.

MR. TEITELBAUM: I think it is. I think there were certain statements made to him while he was in the car. Then he went out of the car. Then he came back and agreed and Mr. Casey made a distinction between two statements that were made and I want to ask now which of those statements or both caused him to make the payments. That was not brought out in direct but it was brought out on cross.

MR. CASEY: I beg your pardon. I know what was on direct because I have the transcript.

MR. TEITELBAUM: May we come to Side Bar, Your Honor? I don't like to explain it without asking the witness.

AT SIDE BAR

MR. TEITELBAUM: During the direct Mr. Rider's statement was when he sat down with Stirone in the car that Stirone told him that No. 1, he wouldn't get to hold that contract. No. 2, there would be labor peace. During the cross examination Mr. Casey was making one of these long questions in which the answer was Oh had you or Oh, hadn't you. During that time he said to him, isn't it correct that Mr. Stirone told you that thing to keep you in labor peace after you had agreed to pay him.

MR. CASEY: There's nothing in the testimony as to that. I will tell you how it came about. On cross examination I asked whether or not he hadn't told the F.B.I. in his statement. That's the only place. I said, did you make that statement. If it is in there, I said it. That's the only testimony about it.

THE COURT: Where is the record?

(Discussion off record.)

THE COURT: For the purpose of the record, counsel for the Government is withdrawing the question.

MR. TEITELBAUM: Yes, it is not worth going into.

IN OPEN COURT

* * * * * * * *

BY MR. TEITELBAUM:

Q. Mr. Colaizzo is from Canonsburg?

A. That's right, he is a real estate man.

Q. And Mr. Stahlman is a lawyer from Charleroi?

A. That's right.

Q. What did the three of you do there?

A. Mr. Stahlman was in it first, then I got in it and then Mr. Colaizzo.

Q. Did you invest money in the building?

A. That's right.

Q. And it didn't turn out profitably, is that right?

A. That's right.

Q. I have nothing further, Mr. Rider. Thank you.

Recross Examination

BY MR. CASEY:

Q. Was that the first time when you gave this statement, and the eight checks to the Government, was that the first time you had ever seen Mr. Stiles?

A. You mean when I gave the eight checks to him?

Q. Yes.

A. No. I saw Mr. Stiles before, once before when he got the statement and we were short some checks. We had to wait for them.

Q. You gave him some checks though the first?

A. No, I didn't give him any checks on the first He got those from the bankruptcy.

Q. Then you later got him some other checks?

A. That's right, we had to hunt. We had to hunt around to find other checks. There was other checks from the—

Q. To Nick Stirone?

A. That's right.

Q. But that is the first time you ever saw Stiles, when he and Sweeny came out to your house?

A. That's right.

Q. That was after you testified at the bankruptcy hearing?

A. That's right.

Q. Now, this apartment building which Mr. Teitelbaum has asked you about out in Canonsburg or in Washington County, Colaizzo was the one who was running that? You just had the money in it?

A. Colaizzo was the rental agent.

Q. He was running the project, wasn't he?

A. He was renting the apartments.

Q. And arranging for the repairs and making the collections and paying the bills, wasn't he?

A. He was making the collection but we were paying the bills. Mr. Stahlman was.

Q. That's all.

JEANNE A. RIDER, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Your name is Jeanne A. Rider.

A. That's right.

Q. You are the wife of Mr. William G. Rider, the witness who testified a little earlier this morning?

A. Yes, sir.

* * * * * * * * *

Q. Now at sometime between the time that you went to Mr. Kassab's house and had that discussion and the time that the formal order was sent in, do you recall anything particular that happened?

A. Well, I don't recall whether or not we had received the formal purchase order, but I do know that after we had started to deliver concrete to the Ragnar Benson job, my husband come in the office one day very angry and called me into the private office.

MR. CASEY: Just a moment, I object to any hearsay testimony.

MR. TEITELBAUM: If it please the Court, since this testimony reflects on a state of mind of William G. Rider it has no connection or nothing to do with hearsay. I refer to numerous cases that have so held.

MR. CASEY: Motive and state of mind has nothing to do with this case.

THE COURT: Objection overruled.

Q. Incidentally do you know what the date was on which you first delivered concrete to Ragnar Benson, that first order?

A. I believe it was September the 13th.

BY THE COURT:

Q. September the 13th, did you say?

A. Yes, sir.

BY MR. TEITELBAUM:

Q. What year?

A. 1951.

Q. Well, go ahead now and tell us what you were saying, what happened when your husband called you into that room.

MR. CASEY: May I have a continuing objection to any testimony.

THE COURT: It is understood this is under your objection, Mr. Casey.

A. Well, my husband, as I stated, was very angry. I knew something was wrong. He called me into his office, told me had just returned from the batch plant and that Mr. Dierker had been up there with a man called Nicholas Stirone.

Q. Did you know who that was?

A. No, sir, I had never heard of Nick Stirone and he said, "As if we hadn't got enough trouble now, I have to pay Nick Stirone 50 cents a yard." I said, "Well, who is Nick Stirone?" He told me that Nick Stirone was the—

MR. CASEY: Just a moment, this certainly doesn't show state of mind. It's an attempt to prove a substantive fact.

MR. TEITELBAUM: It shows state of mind because we can't ask her what his state of mind was until we get to the facts. She is merely stating the facts that are already in evidence.

MR. CASEY: If the Court please, state of mind is by the facial expression, by the stuttering, by the excitability or any other number of things which I have no objection to her testifying to.

THE COURT: No, it also involves conversation, Mr. Casey.

MR. CASEY: Well then—all right, sir.

Q. Proceed.

A. Well, I asked him, as I said, who Nicholas Stirone was. He told me he was the boss of the Laborers Union and I said, "What are you going to pay him 50 cents for every yard for?" He said, "Well, it isn't a matter of if I am going to. I have to." He told me that Nick Stirone had threatened him with the loss of the Ragnar Benson contract. Well, I got very perturbed and told him I didn't see where we would have to pay it. He said, "You don't want to see those trucks"—

MR. CASEY: Just a moment, that might show her state of mind, but I object to that as irrelevant and immaterial.

THE COURT: Objection overruled.

Q. Go ahead.

A. So my husband, when he saw I was upset over the fact that I didn't see where we should pay Nick Stirone 50 cents a yard, he told me if I didn't want to see the trucks sitting in the yard all winter we would have to pay him.

Q. Did he say anything else that Nick Stirone had stated to him about it, in connection with the 50 cents?

A. Well, he did tell me that Mr. Dierker of the Duquesne Slag Products Company told him he'd have to pay it too and I was quite surprised at that. After my husband explained to me—

MR. CASEY: If the Court please, I object to any remarks of the witness as to what she was surprised as being irrelevant and immaterial.

MR. TEITELBAUM: All right.

Q. Mr. Casey doesn't want you to tell the jury you were surprised. Just tell what happened and what your husband's state of mind was.

A. Well, my husband was very angry with Robert Dierker.

Q. Was there any discussion about labor trouble?

A. Yes, sir.

Q. What was that?

A. I asked him what Nick Stirone really had to do with the union. He told me that Nick Stirone had enough power—

MR. CASEY: Just a minute, that's objected to as not showing a state of mine.

MR. TEITELBAUM: It certainly does.

THE COURT: Objection overruled.

Q. Go ahead.

A. —had enough power in the union that if he wanted to cause any labor trouble he could, that Mr. Stirone had told him he wouldn't have any labor trouble if he paid him the 50 cents.

Q. So did your husband then give you any instructions as to what to do in relation to keeping of the books?

A. He asked me how much concrete we had delivered to the Ragnar Benson. I said, well, I didn't know. I'd have to check the records. We hadn't gotten far along in the contract then that I was really spending too much time on that work because they hadn't gotten into their big pours.

Q. Did he say anything to you or did you decide anything about how you would maintain the records for the purpose of paying the shakedown?

A. Well, my husband told me, he says, "Now I want records kept on this because I want everything run through the books."

Q. Did you keep such a record?

A. Yes, sir.

(Book marked Government's Exhibit No. 34.)

Q. I show you what has been marked for identification as Government's Exhibit 34 and ask you what that is?

A. This is the record that I kept of pours at the Ragnar Benson job on the money that was paid to Nicholas Stirone.

Q. What are the papers that are in the pocket there, as a part of this exhibit?

A. These look like copies of the pours, the record of the pour we made to the Ragnar and Benson Company, in which I sent to Mr. Stirone the original, and also there are some vouchers as to the money paid out that we kept in our records.

Q. The money paid out to whom?

A. To Nicholas Stirone.

Q. That first page as the one on top there, does that show the payments to Nicholas Stirone?

A. Yes, sir.

Q. Can you tell me now from your records what was the date of the first delivery of ready-mixed concrete by Rider Supply Company to Ragnar Benson?

A. September 13, 1951.

Q. How much did you deliver at that time?

A. 13.5 yards.

Q. Then what was the next delivery made?

A. October the 2nd. 1951.

Q. Now, in the months of October, November and December, can you tell me how much ready-mixed concrete you delivered to Ragnar Benson?

A. What month?

Q. October, November and December.

THE COURT: That is, of 1951?

MR. TEITELBAUM: 1951.

A. Well, including the 13.5 yards that we delivered in September of 1951, it was a total of 5,079.5 yards.

BY THE COURT:

Q. When you speak of yards, you mean cubic yards?

A. Cubic yards, that's right sir.

BY MR. TEITELBAUM:

Q. Do your records indicate when you made the first payment on account of the shake-down?

MR. CASEY: If the Court please, I object to the use of the word "shake-down." I haven't objected to it heretofore.

MR. TEITELBAUM: It was a shake-down. I don't know what else to call it.

MR. CASEY: Just call it payment. You know what else to call it. This question to this witness on the record, I object to the use of the word "shake-down."

MR. TEITELBAUM: I think I can call it whatever I want. I think it was a shake-down.

MR. CASEY: I think maybe you can if I don't put an objection to your Honor. If the Court says you can't, you can't call it that.

MR. TEITELBAUM: If the Court says I shouldn't, I won't.

THE COURT: I think it would be better perhaps to refer to it in some other way.

Q. Do your records show the first moneys that were paid to Stirone?

A. Yes, sir.

Q. What was the date of that?

A. February 28, 1952.

Q. I show you what has been marked as Defendant's Exhibit B and ask you if that is—what is that?

A. This is a Rider Supply Company check paid out to Nicholas Stirone dated February 28, 1952, in the amount of $1,500 and signed by W.G. Rider.

Q. Who made up that check?

A. I typed the check stub, sir.

Q. Who signed it?

A. My husband.

Q. I see.

MR. TEITELBAUM: May I read to the jury from the back of the check, Your Honor?

THE COURT: Yes, that check has been offered in evidence.

MR. TEITELBAUM: The check which was, of course, made payable to Nicholas Stirone for $1,500, as you have heard, says on the back, Credited to the account of the within named payee,—payee being Nicholas Stirone—absence of endorsement guaranteed, Mellon National Bank and Trust Company, Pittsburgh, Pa.

Q. What did you do with that check after you made it up and your husband signed it?

A. I turned it over to my husband, sir.

Q. With that check, did you give him anything else, do you recall?

A. Not that I recall, sir.

Q. How did you furnish Mr. Stirone with the statement as to how much concrete was delivered, how was that accomplished?

A. Well, aside from that first check which I did not mail to Mr. Stirone, when I would mail him a check at the place designated by him, I would include a record of the number of yards and the date of the delivery of those yards, cubic yards of concrete, informing him as to what the payment was for, that is, the yardage.

Q. Now, this statement here, part of Exhibit 24 which is record of paid account of Ragnar Benson, Incorporated for ready-mixed concrete for period ending December, 1951, did you furnish a copy of that to Stirone?

A. Yes.

Q. How did you furnish him that?

A. Well, when my husband took that first check in, Mr. Stirone then called, I don't know just when it was, and asked if he could have a record and I made up that record. I had to go back and pick up the deliveries. I believe I mailed that record, I am not sure. I believe I mailed it to him separately without the enclosure of the payment.

Q. When does your record indicate that you made your next payment to Nicholas Stirone?

A. In this record I have here, wait until I see. I don't have a date on this.

(Group of checks marked Government Exhibit No. 35.)

Q. Go ahead.

A. I don't find a date on this record here. This is just the amount that was paid.

Q. From Exhibit 24, can you tell us more or less on a monthly basis starting with January—

THE COURT: You referred to Exhibit 24. You mean 34.

MR. TEITELBAUM: Yes, 34, I am sorry.

Q. When you look at Exhibit 34, can you tell me on a monthly basis how much ready-mixed concrete was delivered to Ragnar Benson?

A. Well, of course the amount would fluctuate according to their needs. Now, in October we delivered 2,061.5 yards. In November it was decreased to 1,496 yards. In December it was 1,511 yards. There was an additional 867.5 that I have recorded here, which for some reason I probably hadn't picked up and went back and put it in. In January, 1952, we put 2,054.5 yards.

MR. CASEY: Two thousand fifty-four?

A. That's right.

BY THE COURT:

Q. That's in January?

A. January of 1952. In February we had 1,136.5 cubic yards. In March it was decreased to 196 yards. In April 161. In May 488.5. June it was 26 yards. July it was 1,884. In August it was 2,388.5. In September it increased to 4,379.5. In October it was 4,847.5. No, I am sorry, just 4,847. In November it was 3,927 and three-quarter yards. In December it was 2,042.5. In January of 1953, it was 2,361.5. In February it was 3,022.5. In March it was 3,426.5. April, 3,451. In May, it was 1,539. In June it was 2,515 and a quarter. In July, it was 4,018 and a quarter. August, 2,791. September, it was 2,958. October was 5,309. November it was 1,717. December was 1,540. In January of 1954 we had 738 yards. February it was 646 and March was 56 yards.

Q. What was the total, Mrs. Rider, how much altogether?

A. The total, 32,764.13 yards.

Q. Did you keep these records yourself?

A. Yes, sir.

THE COURT: You haven't seen these yet, Mr. Casey?

MR. CASEY: I have not, sir.

THE COURT: I think we better recess for lunch. Any other records you have pertaining to this witness' testimony, will you show them to Mr Casey?

MR. TEITELBAUM: I think he has seen them all, Your Honor.

(Whereupon a recess was taken until 2:00 o'clock p.m.)

(Change of reporters.)

*   *   *   *   *   *   *

Q. How did you enter these payments in your books, under what heading?

A. Commissions.

Q. Was that your instruction from your husband?

A. No, sir.

Q. Who decided to enter them under that heading?

A. I did.

Q. Why did you so decide?

A. Well, it was very hard to describe that sort of payment and it had to be entered into our records for tax purposes and I didn't know what else to call them. It hadn't been earned so I couldn't call it wages. It wasn't payment for material or services so I couldn't list it under materials or costs of operation in that respect. So I didn't know what else to call it and I just called it commission.

Q. As you look through those checks, you will see that you have noted on there, for example I look at Check No. 2984 and it says June commission and July commission. Did you write that on there?

A. I'd have to see the checks. Yes, sir, to the best of my knowledge, that's my handwriting.

Q. Why did you write that on the check?

A. Well, sometimes we got behind and Mr. Stirone wasn't paid every month as we were supposed to pay him. He would call in and we'd have to send him his check and I stated on the check what it was for.

Q. When you got behind in your payments of this money to Mr. Stirone, would he call you up?

A. Well, he called my husband to begin with—he very seldom, I didn't talk to Mr. Stirone myself when we first started to pay him this money, and I believe my husband referred him to me several times. Then he did start to call me.

Q. You yourself on occasion did talk to him?

A. Yes, sir.

Q. What would he say to you then?

A. Asked me where his money was, how soon he was going to get it.

Q. Did he have any idea how much money he was supposed to get or not?

A. He usually knew just how much he had coming to him.

Q. Did you ever have any conversation with Mr. Dierker?

A. Yes, sir, Mr. Dierker called several times when my husband was out and spoke to me.

Q. What did Mr. Dierker tell you?

A. Mr. Dierker told me to tell Bill that Nick was getting nasty, better pay him.

Q. Would you tell Bill that?

A. Yes, I did.

Q. Subsequently would you make the payments?

A. Not all the time because sometimes we just didn't have it. We were pretty much up against it and trying to get Duquesne Slag's bill paid and sometimes Mr. Stirone had to wait a little longer than he wanted to.

Q. When we finally finished up, did you testify this morning as to how much you still owed him on these so-called payments?

A. I didn't understand the question.

Q. Do you know how much you still owed him at the time you made your last payment?

A. Yes, sir, $1,490.

Q. Do you know how much you did pay him?

A. No, I don't know the exact figures. I have to see the records.

Q. Can you by looking at Government Exhibit No. 34 tell us how much you did pay him?

A. $31,274.13.

* * * * * * *

Cross Examination

Q. Or any of the journals?

A. Mr. Stevenson kept the general ledger.

Q. How would they get into the general ledger, these payments?

A. Mr. Stevenson was our tax accountant. He had been with my husband for quite a number of years. I never interfered with his way of bookkeeping. He had his own method. He'd come up and ask for books. We'd give them to him. He'd go off in a corner by himself and do his work, and when he was through he would leave. I never interfered with Mr. Stevenson's work. He was there a long time before I was.

Q. You would write notes to him and tell him to explain entries to you, wouldn't you?

A. Well, ~~if I~~ wasn't there: If I was there when he'd come up, I'd answer them, if he'd have any questions.

Q. If you wanted to refresh your recollection, you'd write a note and put it in some part of the books so he could see that?

A. I may have done that.

Q. On the Stirone commissions and bonus ledger entry, how would he get the information to make that?

A. Well, he'd get it from the check stub, sir. As I told you he entered all—he had his own records. I never interfered with Mr. Stevenson's bookkeeping, as I told you. He kept his own records. How he entered it, I don't know. I never examined his books.

* * * * * * *

Q. That was you said after the 13th, I believe?

A. That was after we had already delivered concrete to Ragnar Benson.

Q. Was it after the October 2nd delivery date of which you have told us since then?

A. That I could not say, sir. I do know that we had already started to deliver concrete.

Q. It probably was that first load, is that right?

A. What was the first load?

Q. I mean it was after the delivery of that first 13.5 cubic yards of which you have told us here today?

A. You mean that my husband came—

Q. Yes, that he came back over.

A. I told you I don't know the time, sir.

Q. Have you any idea? I drew a calendar such as this on here and we have established some dates. Now this we have marked as September 1st. Now you have told us that on this September 13th, which is a Thursday that on that date, your husband delivered 13.5 cubic yards of concrete to the Ragnar Benson job, at Allenport for Pittsburgh Steel?

A. Yes, sir.

Q. That's September 13th you mean, isn't that right?

A. Yes, sir.

Q. And you made that entry in that yellow sheet in Exhibit 34.

THE COURT: She's testified to all these facts, Mr. Casey.

Q. Is that right?

A. Yes, sir.

MR. CASEY: If I may say to the Court, she might not testify to them again. I have got to ask her.

THE COURT: You have asked her on cross examination and she has been asked on direct examination.

MR. CASEY: I didn't ask her on direct.

THE COURT: I didn't say you had asked her on direct. I said she had been asked on direct. Let's keep this within the limit of reason.

MR. CASEY: In view of the Court's attitude and demeanor I now move the Court respectfully for a continuance of this case and withdrawal of a juror.

THE COURT: Motion is denied.

MR. CASEY: Upon the basis that it tends to prejudice my client and not afford him due process of law under the Constitution.

THE COURT: Motion is denied.

MR. CASEY: Exception. Do I understand that I am not permitted to ask her any more questions?

THE COURT: You may ask her whatever you wish. I am just asking you not to repeat the same questions time and again.

MR. CASEY: I can only do it in my own way. I am trying to establish when her husband came into the office, that's all.

THE COURT: She has testified. She has already testified to that.

Q. You can't tell us, is that it?

A. I can't tell you what?

Q. What date after the 13th?

A. No, sir, I told you I could not establish a date.

MR. TEITELBAUM: If the Court please, that's about the fourth damn time this lady said that.

Q. Was it shortly after?

MR. TEITELBAUM: That's what I object to, Your Honor. She says she doesn't know.

A. I don't know whether it was shortly or not. I don't know what you mean by shortly, sir.

Q. Was it a few days after, would you say?

A. I couldn't even tell you that, sir, I do know that we had already poured concrete at the Allenport mill.

* * * * * * *

Q. Then your testimony is that when your husband came over, just after that date?

A. That's what I said, sir.

Q. You didn't see Mr. Stirone at that time, did you?

A. No, sir.

Q. How long after your husband came back was it, over to the office as you testified, that you first talked to Mr. Stirone on the telephone?

A. I don't believe I talked to Mr. Stirone myself on the phone until after we had started to make that payments.

Q. That would be then after February 28, 1952?

A. That's right, sir.

Q. You had no conversation with him between that time at all?

A. No, sir.

* * * * * * *

Q. Well now, Mr. Dierker, you didn't have any telephone conversation with him with reference to any money for Stirone until after February 28, 1952, did you?

A. That's right, sir.

* * * * * * *

Q. This Exhibit E now, the last date in that relating to the first and last dates on that, relating to the concrete delivered to Ragnar Benson, what was the first date and what was the last date?

A. The first date was September 13th. The last date was December the 22nd.

Q. I see some handwriting and some striking out. Is that your handwriting?

A. Yes, sir.

Q. On the last page, about $1,500?

A. That's right, sir. That's my handwriting.

Q. Would that indicate to you that you sent the check for $1,500 out at the time that Exhibit E went out?

A. No, sir. It would not.

MR. TEITELBAUM: If it please the Court—

A. This was a record that I kept in my office as a copy of the original sent to Mr. Stirone. Now, this could have been delivered to Mr. Stirone any other time than when I put that writing on there.

Q. In any event—

A. This was in my hands.

Q. In any event, it was after December 22, 1951, the last date that appears on there as being the date you delivered?

A. Yes, sir.

Q. You delivered 254 yards of concrete?

A. That's right, sir. I might add that I quite frequently checked myself on my checkbook and would go over invoices or anything that I had in my files pertaining to payments and if I didn't have them marked Paid and the check number, I would at that time do so.

Q. As far as Defendant's Exhibit A is concerned, What is the last day shown, the first and last day shown on the exhibit?

A. September the 13th, 1951 is the first date, November the 30th is the last date shown.

Q. Would it be a fair statement that that went out that you made that up and made it after November 30, 1951?

A. Mr. Casey, I have already testified that I made up many of these statements. Now just when they went out, I don't know. I usually enclose one with the check. Now at Mr. Stirone's request, I also sent him a separate statement.

Q. Do you have any recollection as to whether or not a check went with this exhibit?

A. No, sir. I wouldn't know just whether it did or not.

Q. On Exhibit A, I notice you made that up. Will you explain that, if you can, halfway down there?

A. It says here "the yardage listed below has not been paid for by Ragnar Benson," and there's an ink blotch over the total here, but anyway the amount is $663.50.

Q. Ragnar Benson hadn't paid your husband as of the time?

A. At the time I made that statement up.

Q. That's all.

* * * * * * *

GEORGE THOMAS DOHERTY, a witness in behalf of the Government, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name?

A. George Thomas Doherty.

Q. Where do you live?

A. Dearborn, Michigan.

Q. What business are you in?

A. In the demolition or wrecking business.

MR. CASEY: If the Court please, I'd ask for an offer at Side Bar as to this witness.

AT SIDE BAR

MR. TEITELBAUM: If the Court please, I intend to establish by this witness that there was another — introduce evidence of other conduct at about the same time as the conduct here in question, for the purpose of proving the intent of the defendant in doing what he did, the motive of the defendant, a common scheme or plan of operation by the defendant and for the point of proving that this was not any mistake or inadvertence that Mr. Rider thought he was being threatened but that it was intentional by the defendant and that the defendant was playing on the fear that Mr. Rider had of labor loss in taking the money that he took.

MR. CASEY: That is objected to upon the basis that this defendant is under another indictment which involves this man as material to this Government, which indictment Judge Sorg refused to consolidate for the purposes of trial with this case.

It is objected to upon the basis that it is proof of another crime which has no probative value so far as the indictment here is concerned and is proof of res inter alias acta and not within any of the exceptions.

MR. TEITELBAUM: If it please the Court, whether the acts—

THE COURT: Wait, I want to get your offer and objection on the record. Is that your offer and is that your objection?

MR. CASEY: I object to it upon the basis it would prove an independant crime.

MR. TEITELBAUM: I say whether the conduct—

THE COURT: I don't want your argument. Does that conclude your offer?

MR. TEITELBAUM: I want to establish that the act charged was intentional and willful, not accidental and I want to prove motive. I want to show guilty knowledge and purpose. I want to rebut any inference of mistake. I want to show this was a

common scheme or plan that the defendant used.
(Discussion off record.)

THE COURT: The objection of counsel for the defendant is sustained at this time. The Court will consider this again on rebuttal, if offered.

* * * * * * * *

MR. TEITELBAUM: Yes.

If it please the Court, the Government rests.

MR. CASEY: If the Court please, I have a motion under the criminal rules of procedure. I'd like to ask leave to argue it, if I may.

THE COURT: We will excuse the jury for the time being.

(Jury excused.)

MR. CASEY: May it please the Court, the defendant Nicholas A. Stirone now moves for judgment of acquittal as provided by the rules of criminal procedure, upon the basis that the Government has not made out a case which can be submitted to the jury, it having sustained—

THE COURT: May I interrupt just one moment. Do you want all of your argument recorded or just the reasons?

MR. CASEY: Just the reasons.

THE COURT: All right, put your reasons on and then we will give the reporter a rest, if that's all right with you.

MR. CASEY: For the reasons that at Criminal No. 14871, the Government has not made out a case of violation of the Act of Congress commonly known as the Hobbs Act, upon which this indictment was drawn, for the reason that first, that the Government has shown no obstruction, delay or hindrance or otherwise affectation of interstate commerce.

Secondly, that the Government has shown no extortion as defined in the Act of Congress, and that therefore have failed to sustain the charges set forth in the indictment, and as set forth in the Government's bill of particulars,

THE COURT: Are those the reasons you are advancing?

MR. CASEY: The Government has not made out a prima facie case sufficient to submit to the jury.

THE COURT: Do you want this on the record?

MR. CASEY: No, I don't want it on the record. (Discussion off the record.)

THE COURT: The defendant's motion for judgment of acquittal is denied.

MR. CASEY: Have the record note me an exception, please.

(Jury resumed box.)

THE COURT: Mr. Casey?

* * * * *

NICHOLAS A. STIRONE, a witness in behalf of the defendant, having been duly sworn testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name?

A. Nicholas A. Stirone.

Q. How old are you?

A. 56 next birthday.

Q. Where do you live?

A. 1506 Bigelow Apartments, Bigelow Square, Pittsburgh 19, Pa.

Q. How long have you lived there?

A. Since 1952, the month of May.

Q. What is your marital status?

A. Married, father of two children.

* * * * *

It was at that time that Mr. Dierker thought, if I knew Mr. Kassab that well, would I help to get this contract for Mr. Rider. And I immediately informed him that I didn't know Mr. Rider, I didn't have any friendship with Mr. Rider, and that I didn't know in any way that I had any labor relations with him, and that on that basis I didn't feel as though I should go ahead and intercede for and on behalf of Mr. Rider without first talking to Mr. Rider to find out whether or not he would be interested in engaging to do this chore or this errand for him.

At that time Mr. Dierker said, "Well, Nick, I can't very well speak for Mr. Rider, but I will be more than pleased to tell Mr. Rider just how you feel." "Well," I said, "sir, that is perfectly within your province. If you need me and want to talk to me, you can call me at the office." And that is the way it was let.

Now, this was on the 27th day. On the 28th day of August, 1951, I received a telephone call from Mr. Rider—Pardon me—I received a telephone call from Mr. Dierker informing me that Mr. Rider would be glad to meet me at his office at Bingham Street, South Side, Pittsburgh, on the next morning at ten a.m. The next morning at ten a.m. was August the 29th, and I agreed to do so. I went the next morning to meet Mr. Dierker for the first time in my life.

BY MR. CASEY:

Q. Mr. Dierker?

A. I met Mr. Rider for the first time in my life.

* * * * *

And I told him, "Mr. Rider, if you want me to intercede for and on your behalf, I shall expect you to pay me a commission, the same as you would pay anybody else that would get you this amount of work." And he said, "I will be glad to pay you the commission." He said, "How much is it that you want?" And I said, "Fifty cents per cubic yard." He sat and pondered for a few minutes, and then he said, "Fine. It's a deal.". We got up and shook hands on the deal.

And then we discussed the method of payment. And at that time I informed Mr. Dierker that this deal had to be absolutely legitimate, payments had to be made in check, and that if he had any idea that there was anything wrong or under the table, I didn't want any part of it. Mr. Dierker was sitting there all the time, listening to this conversation. Mr. Rider immediately at that time said, "Of course,"—he said—"this will be paid you on the basis of a commission of fifty cents per yard for every yard of concrete that is delivered by our company to the Ragnar Benson job." We again—

* * * * * * * *

Q. And what, if anything, did you do after that?

A. I left there and went directly to my office, and I called Mr. Jacob Kassab, the executive vice president of Ragnar Benson. I don't clearly recall now whether I carried on the conversation with him over the telephone or whether I met with him in person. And at that time it was—I believe the same day that I talked to him on the telephone and desired to talk to him in person, if I could. And I then informed him—informed Mr. Jacob Kassab that would he, as a personal favor to me, give this contract for the ready mixed concrete to Mr. William G. Rider.

At that time Mr. Kassab didn't believe, and he made it very, very specific — he said, "Nick, I don't know whether the Rider Supply can meet my schedule or can do my job." He said, "He is just going into business." He said, "This is a big operation, and I can't afford to take any chances." He said, "There's a possibility that I may do this job myself by batching my own material right on the job." "Well," I said, "whether you do or not is up to you. But I would appreciate it, if you do give the contract, that you give it to William G. Rider." He then said, "Well now, Nick,"—he said—"if I do give it to Mr. Rider"—he said—"now he will have to—his price will have to be right." He said, "I am not about to give him this job because you ask me to give it to him, if his price is going to be exorbitant." And I then told him that if the price wasn't right, he need not give the job to Mr. William G. Rider. "Well," he said, "that's fine then." And we let it go at that. And we then, of course, left each other; and I went about my business.

In a matter of about a couple of days Mr. Kassab called me and expressed concern all over again, that he didn't think Mr. Rider was equipped to do the job, and that would I investigate it to make absolutely certain before he gave him the job.

At that time I then called Mr. Dierker and Mr. Rider and asked them to make absolutely certain as to whether or not he could qualify to meet the schedule of operations for the Ragnar Benson Company, because Mr. Kassab was fearful of his inability to perform on the contract. Well, within a matter of twenty-four hours Mr. Dierker called me back and assured me beyond any question Mr. Rider would be able to perform on the contract. I then proceeded to again call Mr. Kassab of the Ragnar Benson Company to inform him and assure him that he could make the deliveries and meet the schedule that Ragnar Benson would designate in order to perform on the job. He said, "Well, that's fine. Nick. I will now give him the job." I believe at that time it could not have been more than the 5th or 6th of September.

Q. Then did you hear at a later time that he had gotten—that Rider had gotten the job?

A. Sir, I received a telephone call from Mr. Jacob Kassab advising me that he had, at my suggestion and recommendation, given this job to William G. Rider, or the Rider Supply Company,and that he was going to give him a verbal order—or was giving him a verbal order, that would be later followed by a formal purchase order.

At that time I thanked Mr. Kassab. And I want to make the record right and straight here, so that no one misunderstands me. I at no time told Mr. Kassab, of the Ragnar Benson Company, that I was going to make a commission on this particular business venture.

Q. Did you at any time use any threats with Mr. Rider to obtain any promise of a commission?

A. That, sir, after having heard the testimony given here, to me was so asinine that I could hardly contain myself. I at no time ever threatened, intimidated or coerced Mr. Rider. As a matter of fact, I don't know how anyone under the circumstances could have in any way threatened Mr. Rider.

* * * * * * * *

Q. Now, those checks about which I questioned you here just now, of Government Exhibit 35, did you report those matters as income in the various years involved?

A. I most assuredly did report on my tax returns every penny that was paid me on this transaction.

* * * * * * * *

A. Emphatically, no, sir.

Q. Did you ever tell him at any time that if he did pay you that money that you would see he didn't have any labor trouble?

A. No, sir.

Q. Cross examine.

* * * * * * * * *

Cross Examination

THE COURT: We will strike the answer from the record, Mr. Teitelbaum, because I do not deem it responsive to your question.

Q. Now, will you satisfy my ego by answering my question?

A. Sir, perhaps I don't understand you when you state "other trade, occupation or profession"——

Q. I forgive you. Answer my question.

A. The only thing that I can remember is that in 1938 I may have invested some money in the drilling of oil—for oil, and I made some investments in the stock market. Now, other than that I don't recall about any other avocation, profession, or anything else.

(Two documents marked respectively Government Exhibit No. 42 and Government Exhibit No. 43.)

Q. I show you what has been marked Government Exhibit 42 and ask you if that is a copy of your 1937 income tax return.

THE COURT: What year is it for?

MR. TEITELBAUM: '37.

MR. CASEY: You say that is the income tax return?

MR. TEITELBAUM: I asked Mr. Stirone that.

MR. CASEY: If it is the return?

MR. TEITELBAUM: If it is a copy of his 1937 income tax return, yes, sir.

MR. CASEY: Is it a copy or an original, sir? May I inquire as to that?

MR. TEITELBAUM: That is what I asked Mr. Stirone, Mr. Casey.

THE COURT: As I understand the question, Mr. Casey, is this a copy of his 1937 income tax return?

MR. CASEY: I would like to know whether—

MR. TEITELBAUM: Now, wait. Let the witness answer the question.

MR. CASEY: I am going to move that this evidence—if it is shown that it is taken by the Government from the files of the Internal Revenue Bureau, I ask that the evidence be suppressed, under the Constitution. That is why I am asking whether or not it is without legal authority brought here by them. If it is subpoenaed here to court, his income tax return, a copy of it, I have no objection to it. If it was taken from the records of the Government, I think it is illegal and unlawfully acquired evidence, and I move for the suppression of it. And I think I have a right to find that out.

MR. TEITELBAUM: You can't ask Mr. Stirone that.

MR. CASEY: I can ask you that.

MR. TEITELBAUM: I tell you that I obtained that evidence—that I have it pursuant to a subpoena, and that I have shown it to him and asked him what it is.

MR. CASEY: May I inquire then whether the subpoena was directed to the Internal Revenue Bureau or any Bureau of the United States Government?

MR. TEITELBAUM: Yes, it was

MR. CASEY: Then I renew my motion.

THE COURT: You what?

MR. CASEY: I move that the evidence be suppressed, upon the basis it is illegally acquired. It is his—under the Constitution of the United States and under the Internal Revenue laws, this man or any arm of the government has no right to pry into the private affairs of a taxpayer, and this is illegal evidence, against the Constitution—procured against the Constitution. And besides that, I am amazed and surprised at the tactics of the United States Attorney's Office in doing it. He knows it is illegal.

MR. TEITELBAUM: Not only do I not know it is illegal, I am convinced it is not illegal. The evidence was not obtained illegally from this defendant. Therefore he has no right to ask for any suppression

MR. CASEY: If the Court please,

MR. TEITELBAUM: Now, let me finish, Mr. Casey. I have shown him a document and asked him what it is. Mr. Casey asked me—although I don't think he had any right to ask me—where I got it. I told him where I got it. I think now Mr. Stirone has a right to answer whether it is a copy of his 1937 income tax return.

THE COURT: Yes. Just answer yes or no. Now, it depends on what he is going to do with it after that, Mr. Casey.

MR. CASEY: If the Court please, even that is sufficient, under the Constitution, I think it is the Sixth Amendment. The Government compels him to file an income tax return, and then brings it in here. I move that it be suppressed.

THE COURT: The objection at this time is overruled.

A. I assure you, sir, I have no hesitancy in telling you it is my return.

Q. Now I show you what is Government Exhibit 43, and ask you what that is.

MR. CASEY: I have the same objection, if it is received in the same way.

Q. (Continuing) Is it a copy of your income tax return?

MR. CASEY: Just a minute. And besides that, I want to place on this record

THE COURT: Well, we will give you all the opportunity in the world.

MR. CASEY: I want to place on this record, if this document was obtained by any subpoena, the only way a subpoena can be used, according to law, is bring in the person to whom the subpoena is directed, bring him into court and ask him the questions under oath. And that if this man or any other person in his office or the Federal Bureau of Investigation got this, I charge that it is illegal and an attempt at making a man give evidence against himself.

MR. TEITELBAUM: When a witness takes the stand in his own behalf he waives any privilege against self-incrimination.

MR. CASEY: No, he doesn't.

THE COURT: That is the only thing he doesn't waive.

MR. TEITELBAUM: Well, we are entitled to question him as to any matter that is pertinent to this case.

THE COURT: That is right, you are. But he is not required to answer anything that might tend to incriminate him. There is no question about that. I agree with Mr. Casey on that proposition.

MR. CASEY: And that is what he is doing here. Here he has access to private and personal files on the part of the United States Government. He says he has subpoenaed them. How he has any authority to subpoena them into his custody I am at a loss to know. And I call upon the Court to make some comment in so far as the United States Attorney's Office, and this Assistant in particular, relating thereto.

THE COURT: Is that your objection?

MR. CASEY: Yes, sir.

THE COURT: Now, you answer the question, Mr. Stirone. Just whether or not that is a copy of your income tax return.

A. I am proud to tell this Court and jury it is my return.

BY MR. TEITELBAUM:

Q. All right, sir. May I have it? Now, sir, in 1937—

MR. CASEY: Just a moment. I think, as far as we have gone here, even though I do deem it illegal, unfair, and a few more things, I think I am entitled—just the same as Mr. Teitelbaum stood at my elbow many times—I think I am entitled to see the document.

MR. TEITELBAUM: I haven't put them in evidence. I just asked Mr. Stirone some questions.

MR. CASEY: I think I am entitled to see them, sir.

THE COURT: I think he is entitled to see them, Mr. Teitelbaum.

MR. TEITELBAUM: All right, sir

THE COURT: Now, there is a statute covering this.

MR. TEITELBAUM: Covering what, sir?

THE COURT: His income tax return.

MR. TEITELBAUM: I haven't placed any income tax returns in evidence.

THE COURT: No, you haven't.

MR. TEITELBAUM: I am asking some questions, and that is all I have asked.

MR. CASEY: If the Court please, in addition to my previous objection, I object to the questions upon the basis that the questions are being asked upon matters which are collateral to this issue and not having been asked in direct examination.

THE COURT: I don't know what these show, but let me have a look at them, will you, please?

(Exhibits No. 42 and No. 43 handed to the Court.)

Q. Now, do you recall whether in 1937 you had any other income, other than your salary from your profession—from your work as a general representative of the International Hod Carriers and as president of Local 1058, in 1937?

MR. CASEY: Objected to, as not cross examination; and cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, you have presented my income tax returns. They speak for themselves. You may read them. You have my privilege to read my income tax returns. I am proud for you to read them; I am not ashamed.

Q. I just wanted to know whether this refreshes your memory as to whether you had any other income.

A. The tax returns speak for themselves. You may read from them.

THE COURT: Mr Stirone, I direct you to answer the question. Did you or did you not have any income other than that?

A. If Your Honor the Court please, I believe I have answered the question originally when I told the District Attorney that I had invested my moneys in the stock market, and that if he called that an avocation or profession, yes, that I had. And that is what the return shows, sir.

Q. Now, you have told me that I have a privilege of reading this and asking you about it. Is that right?

A. Yes, you may.

MR. CASEY: As I say, I accord you the privilege of it. I deny your right to them and criticize you for having gotten them.

THE COURT: Just a minute, Mr. Casey. You have put your objection on the record.

Mr. Teitelbaum, so that we may get this matter cleared up, I will give you the privilege of again asking Mr. Stirone what income he had and what were the sources, for the year 1937.

MR. TEITELBAUM: All right, sir.

Q. What was your income and what were the sources for the year 1937?

A. Net income on Item 12 minus 19 was 7,945.42. The sources of income, sir, were the International Hod Carriers, Building and Common Laborers' Union of America $2872, $1370 traveling expenses, being the allowed reimbursement expense of $1370. Then on page 3, Description: 4 lots of various stocks bought and sold through Sutro Brothers & Company — Let me see here if I get this clearly. Gross Income — let me see — 10-21-37, 10-28-37, one week, 13,527.85; Cost or Other Basis, 10,414.33; Gain or Loss, $3,113.52. And then on 11-10-37, Contract price 4,030.41; Cost or Other Basis, 3,815.00; Profit or Loss, $215. And then 100 General Electric, Cost 3,675.02; Cost or Other Basis, $4,000; the loss on this transaction was $339.08. It shows here a gain of $2,989.85.

Q. That, of course, is the item under Item 10. Right now there is another item, Item 11, Other Income, $2,720. Is that right?

A. It so states here on Item 11.

Q. Do you remember now what that—how you earned that $2720?

A. At the moment I do not, sir.

Q. Now, for 1938 did you also have other income, outside of stocks or salary from the International or salary from Local 1058?

A. It shows on 11, "Other Income, Exclude income from annuities. State nature. Use separate schedule, if necessary." $9,100.

Q. Do you recall now how you earned that $9,100?

A. At this particular time it would be hard to remember; but if I paid income tax on it, you can rest assured that I earned them somewhere.

Q. Oh, yes. Now, your total salaries during those years were less than—in '38 was less than $3500, wasn't it?

A. The record speaks for itself.

Q. Does that refresh your memory (handing Exhibit 43 to witness)?

A. This shows $3500 for salary.

Q. And other income of in excess of nine thousand dollars?

A. That's right.

Q. And at this time you can't remember where the nine came from?

A. For the moment I can't; but it is highly possible.

Q. Do you remember one time having a conference where you were under oath, down in New Jersey, about the source of that income back around 1937—back around '39 or '40?

MR. CASEY: If the Court please, I object to the line of questioning, as cross examination upon a collateral matter. It would take time in order to go back and dig out those records, if necessary, to prepare this witness in so far as that is concerned. I asked no questions relating to any income during the course of the direct examination. If this is to be an inquisition as far as this man is concerned, I want my objection upon the record. To ask a man to go back twenty years as to his income, and without his books or papers other than his income tax return, I think is unfair——

THE COURT: Well, he has already testified he doesn't remember, Mr. Teitelbaum.

MR. TEITELBAUM: No, he hasn't testified he doesn't remember whether he had a conference.

I just asked him whether he had a conference, under oath, that he can remember.

MR. CASEY: The same thing applies there.

MR. TEITELBAUM: Well, he can answer it, and if he doesn't he doesn't.

A. Am I to answer, Your Honor?

MR. CASEY: Just a moment. If the Court please, if I may break in and [illegible] that there is one indictment here at—whatever the Criminal number is—

MR. TEITELBAUM: But a man that can remember—

MR. CASEY: Just a moment, please. For my record.

THE COURT: Let Mr. Casey finish.

MR. CASEY: There is one Criminal Action here, at 14871, in which there has been a bill of particulars in addition to the indictment. And I say to this Court that all we are called upon to answer at this time is this matter involved here. And that to let the Government question on collateral matters, which might be for the purpose of contradicting him later, is not proper under these circumstances.

MR. TEITELBAUM: When a man has testified that he can remember the precise date in 1937 that he arrived in Pittsburgh, can remember the precise room in his hotel—the precise hotel he stayed at, can remember who came with him, he can remember just exactly his various procedures in organizing unions, I don't think it is out of line to remember how much money he made.

MR. CASEY: He told you nobody came with him.

MR. TEITELBAUM: I want to test his memory here.

MR. CASEY: You may do that, sir. But I

submit you can't do it on collateral matters. I have no objection to your doing it on any questions arising in direct examination.

THE COURT: Well, I will sustain the objection as far as the question pertaining to that particular conference is concerned. I don't know what that has to do with this at all.

Q. Do you remember whether you ever had a conference about your income, at which time you were asked to take an oath?

MR. CASEY: Now, if the Court please, it is the same matter.

THE COURT: Yes. I sustained that objection.

MR. TEITELBAUM: I thought that was your objection.

THE COURT: No.

* * * *

Q. Now, in 1943 you ceased to be an International—a general representative of the International Union. Is that correct?

A. Yes, sir; or thereabouts

Q. Now, it was at that time, in 1943, that your Union had a conflict with the International. Is that correct?

A. In 1943 or '44—

Q. Please, sir, just answer me.

A. Well, I am trying to set the correct time.

Q. All right.

A. To give you an honest answer, sir.

Q. That is fine. That is exactly what I want.

A. I believe in 1944 is when there was a fracas—or maybe that is not the correct word. In 1944, approximately, the International Union saw fit to file charges against our Local Union.

Q. They wanted back your charter and books and records, didn't they?

MR. CASEY: That is objected to, as not cross examination and as cross examination on a collateral matter.

THE COURT: Objection overruled.

A. Sir, they did not want the books, and they did not want the treasury, and they did not want the charter back.

Q. What was the lawsuit? Didn't Mr. Moreschi file a lawsuit against you?

A. No, sir.

Mr. CASEY: Just a moment, please. If the Court please, in order to save myself getting up each time, I would ask that I have a continuing objection to this line of questioning, as to matters which are not in the direct examination and, in my opinion, not germane to this issue.

THE COURT: Whenever you want to object you better put your objection on the record, Mr. Casey.

MR. CASEY: All right. I object to this question.

THE COURT: Objection overruled.

A. Will you restate the question again, please?

Q. Did Mr. Moreschi file a lawsuit against you at that time? And your Union.

A. Mr. Moreschi did not file a lawsuit against me.

Q. I added "and your Union."

A. And my Union.

Q. There was no lawsuit filed?

A. Not by the International Union.

Q. Was there a lawsuit filed by a man by the name of Ross Adams at that time?

MR. CASEY: Objected to, for the same reason.

THE COURT: Objection overruled.

A. Against whom.

MR. CASEY: If the Court please, the answer by the witness there seems to me to be irrefutable proof that the questions are not cross examination, because otherwise they would be known in the direct examination and there would be no question as to how it was done.

THE COURT: Mr. Casey, I have overruled your objection.

Q. Against Nicholas Stirone, also known as Nick Stirone, George Dellenbaugh, John Dunbar, Thomas Pecora, Frank Shmelevski, also known as Frank Chemel, George Brickell, as officers and individuals, and Local No. 1058, International Hod Carriers, Building, and Common Laborers Union of America, affiliated with the American Federation of Labor, in the Court of Common Pleas of Allegheny County, Pennsylvania.

A. There was.

Q. Now, was it after that lawsuit that your dispute arose with Mr. Moreschi?

MR. CASEY: Now, wait a minute. If the Court please, I object to the question, as not being cross examination. If it is after the filing of the lawsuit, the disposition of the lawsuit, I don't know; and he doesn't ask him.

MR. TEITELBAUM: I asked, filed.

THE COURT: Objection overruled.

A. Will you state your question again, sir?

Q. Did Mr. Moreschi's action take place after this lawsuit was filed?

MR. CASEY: I thought we were talking about Ross Adams.

A. I am trying to follow him, Mr. Casey.

Q. Well, just answer my questions, and you will be better off.

MR. CASEY: Now, if the Court please,—

MR. TEITELBAUM: I am sorry. That was

an improper comment, Your Honor.

THE COURT: Just a moment, Mr. Stirone. What did you say, Mr. Teitelbaum?

MR. TEITELBAUM: I said, "Don't try to follow him. Just answer my questions."

MR. CASEY: You said, "You would be better off."

MR. TEITELBAUM. I said, "You would be better off." And I said I shouldn't have said, "You would be better off."

THE COURT: There is so much colloquy here, then we lose track of the question. Now, what was your last question?

MR. TEITELBAUM: I asked him whether Mr. Moreschi's action, which he has testified to previously, took place after this lawsuit was filed.

BY THE COURT:

Q. Now, can you answer that question, Mr. Stirone?

A. I believe, sir, that there arose a constitutional question after that suit was filed. That suit was filed, I believe, in 1944. I think the Court of Common Pleas threw Mr. Ross Adams out three times running.

BY MR. TEITELBAUM:

Q. That doesn't answer my question very well. What I want to know is, did Mr. Moreschi want you to come down to see him at the International office to discuss what was alleged in that lawsuit?

MR. CASEY: Objected to, as not cross examination.

THE COURT: Objection overruled.

A. If the District Attorney is desirous of getting the record verbatim on that particular case, I shall be pleased to furnish it to this Court and to the District Attorney.

Q. I just want an answer to the question.

A. I can't remember word for word what you are trying to get at.

Q. I just want to know what Mr. Moreschi wanted to see you about.

MR. CASEY: Just a minute. That is objected to, as not cross examination. Ask Mr. Moreschi.

MR. TEITELBAUM: I did ask Mr. Moreschi. Now I want to know whether Mr. Stirone remembers what he wanted to see him about.

MR. CASEY: If the Court please, I submit to this Court that he can't test this witness's credibility upon collateral matters.

THE COURT: I have overruled your objection, Mr. Casey.

A. Repeat it again, sir.

Q. What were the charges? What did Mr. Moreschi want you to come to International Headquarters to talk about?

A. That, sir, had to do with the reinstatement of Mr. Ross Adams.

Q. And did you refuse to go to see Mr. Moreschi?

A. I did not—

MR. CASEY: Just a moment. Objected to, as not cross examination.

THE COURT: Objection overruled.

A. I did not refuse, sir. As a matter of fact, I went to Washington and spoke before the General Executive Board of our International Union.

Q. Was that before or after the Local was—certain sanctions were imposed on Local 1058 by the International?

MR. CASEY: Objected to, as posing a question which is not in the evidence, and as not cross examination.

MR. TEITELBAUM: I think it was in the record, Mr. Moreschi said they sent an International vice president here.

MR. CASEY: He didn't say anything about sanctions.

THE COURT: I can't recall anything about sanctions.

MR. TEITELBAUM: It is a sanction if an International vice president was called in here to act as a trustee for a certain period of probation. That is a sanction.

MR. CASEY: I have no objection to Mr. Teitelbaum taking the stand as a labor expert and saying whatever he wants about it, but I do object to it now, until he is sworn at least.

THE COURT: I sustain the objection to the question in that particular form.

Q. At that time what happened to Local 1058, as result of this dispute between the International and you?

MR. CASEY: Objected to, as not proper cross examination.

THE COURT: I will overrule the objection.

A. Repeat the question again, sir.

MR. TEITELBAUM (to reporter): Would you read the question, please?

Q. (Last question read.)

MR. CASEY: Now, if the Court please, I said, in order to avoid just what occurred now, I want to have a continuing objection to this line of questioning, and you said I must object each time.

THE COURT: All right. I will give you a continuing objection to this particular line of cross examination.

Q. (question again read.)

A. What happened—Repeat that again, please, so I can digest it properly.

Q. (question again read.)

A. As far as I can recall, the officers of 1058 were suspended because of an action taken by the General Executive Board of the International Union.

Q. Why?

A. Because at that particular time the International Union requested that the officers of 1058 go to Chicago to answer formal charges presented by the general president, and the Local Union took the position that because of the war they would prefer to go to Washington, D. C.

Q. What were the charges, Mr. Stirone?

A. That I don't remember, sir.

Q. You don't remember what charges were brought against you?

A. Sir, I want to repeat myself, I would be pleased to get you the formal record.

Q. I just want to know if you remember. I am just testing your memory, sir. Do you remember?

A. Not in toto.

Q. All right. In part, what the charges were?

A. The charges were, if I can remember correctly, that because of our refusal to go to the city of Chicago to attend that Board meeting we stood suspended as officers of that Union.

Q. I am trying to find out why they wanted you to go to the Board meeting. What did they want you to answer there?

A. To answer charges they were going to present before the Board. And we didn't have a copy of the formal charges.

Q. You never found out what they were?

A. I don't think it was necessary to find out because the whole matter was adjudicated within a short period of time.

Q. You went to court and asked for an injunction against Moreschi, didn't you?

A. Our Local Union saw fit to go to the Court of Common Pleas to seek redress for what they considered an unjust act on the part of the International Union.

Q. An International Union official was sent into Pittsburgh at that time—

A. Not at that time; not at that time, sir.

Q. Prior to the final disposition of your dispute was an International official sent in here?

A. The International official was sent in here, I believe a matter of a couple of months before the court—before the matter was brought to the Court of Common pleas.

Q. But after you had been suspended. Is that correct? I am talking about Mr. Echeson.

A. Mr. Echeson was here prior to the suspension.

Q. And did you cooperate with Mr. Echeson and give him the books and records, or let him examine them?

A. We gave Mr. Echeson, by consent agreement, everything that he asked for.

Q. I see. And was Ross Adams ever let back in the Union?

A. Ross Adams was given every ample opportunity within the constitution to come back into the Union.

Q. Why did you throw Ross Adams out of 1058?

A. For your information, we never threw—

Q. For the jury's information.

A. Well, you will excuse me. You are asking the question, therefore I was directing my answer towards you.

Q. That is all right.

A. I want you to know, sir,—

Q. Well, all right. I just want you to answer the question, please.

A. We never threw Ross Adams out of that Union. He suspended himself through nonpayment of dues.

Q. Would you take his dues?

A. Yes, sir.

Q. And then he filed a suit to get back in the Union, didn't he?

A. Sir, he filed a suit with deliberate intent, after being afforded the opportunity of reinstating himself in the Union in accordance with a decision made by the General Executive Board of our International Union, he failed to avail himself of the time limitations given to him by that Executive Board.

Q. Did he file suit, trying to get back into 1058?

A. After that he filed a suit, with full intentions—with malice aforethought, is maybe the best word I can use.

Q. Against whom?

A. Against the Local Union and its officers.

Q. Any particular officers?

A. All the officers.

Q. You saw the lawsuit, didn't you? You saw the papers that were filed against you?

A. Yes, indeed, I saw them.

Q. And he made various allegations against you personally, didn't he?

A. He made so many allegations that the Court of Common Pleas laughed him out of court.

Q. Was he subsequently allowed back into the Hod Carriers Union?

A. He subsequently never made application to our Union.

Q. Do you know whether he ever was subsequently permitted to enter another Local Union of the Hod Carriers?

A. That I don't know.

Q. You never heard anything about it?

A. Sir, I believe, if my memory serves me right, that during that fracas with 1058 and the International Union he attempted and probably was accepted in Local 178 of the Demolition and Scrap Metal Workers.

Q. You know he got into Local 178, don't you?

A. You asked me the question, I am trying to give it to you as honestly as I can.

* * * * * * * * *

Q. What is the Ruston Company?
A. The Ruston Company, sir, is—

MR. CASEY: Just a minute. Objected to as immaterial and not proper examination.

THE COURT: Objection overruled.

A. The Ruston Company, sir, is the result of a partnership formed in 1944, I believe, then dissolved and is now a sole proprietorship owned by me.

Q. What does the Ruston Company do?

A. The Ruston Company keeps a record of things that I do in the nature of legitimate business in order that I satisfy the Bureau of Internal Revenue with a proper record of what business that I do.

Q. What kind of business do you do, Mr. Stirone?

A. That could be anything within the legal category of the Constitution of the United States.

Q. You don't know what kind of business the Ruston Company does?

A. Sir, The Ruston Company is not limited as a fictitious trade name.

Q. I am not asking you that. I am asking you what it does.

MR. CASEY: I object to the counsel arguing with the witness.

MR. TEITELBAUM: I am not arguing with him at all.

THE COURT: I don't consider that to be an argument, Mr. Casey.

MR. CASEY: I take it then I am overruled?

THE COURT: You are overruled.

A. Will you please rephrase your question or tell me the question?

Q. What does the Ruston Company do?

A. Mr. Teitelbaum, The Ruston Company does anything within the Constitutional provision allocated to an American Citizen.

Q. What has it done, Mr. Stirone?

A. It has done a multiple number of things of which I can not give you an exact detailed picture of each item that is done.

Q. Does it buy and rent equipment?

A. Yes, sir.

Q. Heavy construction equipment?

A. Yes, sir.

Q. To whom does it rent it?

A. It rents it to the contractors or those of them who wish to rent it.

MR. CASEY: If the Court please, I object to this line of questioning as having no probative value, being not proper cross examination, it has no relevance on the issue here involved.

THE COURT: Defendant's objection is overruled.

A. May I, sir—I want to make a correction to that statement.

Q. Oh sure, I want you to make corrections.

A. In order that the record be kept straight.

Q. Just make your correction.

A. I believe that the Ruston Company had in its books, there are records of two pieces of equipment which were originally owned by Mrs. Stirone. I just wanted to get that correction because if my memory serves me right, that was the only two machines that were owned by that company that was engaged in the heavy construction industry.

Q. After you got married, Mrs. Stirone gave the equipment to you, is that right?

A. Mrs. Stirone never transferred title to those machines to me.

Q. Didn't you tell me you were the sole owner of the Ruston Corporation—Ruston Company?

A. That is very true but we have submitted joint tax accounts, joint tax figures and therefore it would make her as much an owner of that company as I am.

Q. I see. Did you one time rent a shovel to Perini Brothers when they were digging the Squirrel Hill Tubes?

MR. CASEY: If the Court please, I object to that as not cross examination and having no probative value, cross examination on a collateral matter and the type of matter upon which the Government could not have produced evidence in its case in chief.

THE COURT: The objection is overruled.

Q. Would you please restate your question?

A. Did you rent a shovel to Perini Brothers when they were digging a tunnel under Squirrel Hill in the Parkway?

A. That shovel was rented, sir, by Mrs. A. E. Stirone through a company that she owned prior to my marriage.

Q. That had nothing to do with the Ruston Company?

A. No, it did not at that time have anything to do with the Ruston Company.

Q. When was that shovel bought?

A. I believe, sir, around 1948 sometime.

Q. Did you handle the rental for Mrs. Stirone to Perinis or did she deal with them herself?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Would you please restate the question?

THE COURT: Will you read the question?

Q. (Question read.)

A. Sir, if my memory serves me right, that rental was paid directly to Mrs. Stirone or her assignee.

Q. I asked you who negotiated with Perini Brothers, you or her?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Sir, if my memory serves me right, I believe that Mrs. Stirone herself and I believe I may have been with her at that time.

Q. Do you know what the rental was on the shovel?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Just a moment. I didn't quite hear that question.

MR. TEITELBAUM: I asked him, sir, if he knew what the rental was on the shovel.

THE COURT: The objection is overruled.

A. I believe, sir, the rental was $2,000 a month.

Q. You had a contract for two years of the rental?

A. Sir—

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection is overruled.

A. Sir, I did not have any rental contract. That rental contract was with somebody else.

Q. Was there a rental contract?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. I don't remember, sir, whether there was or not.

Q. Do you remember with whom the contract was?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. That I don't remember as to who the individual was the contract was made with.

Q. Who got the $2,000 a month?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: Objection overruled.

A. Certainly not I.

Q. Do you know who got it?

A. I don't remember.

MR. CASEY: Just a minute until I get my objection in. Objected to as not cross examination.

THE COURT: Objection is overruled.

Q. Did you include the income from that shovel in the joint income tax return?

MR. CASEY: Objected to as not proper cross examination.

Q. For the year in which the rental was received?

THE COURT: Objection overruled.

MR. CASEY: Just a moment. I include in my objection the latter part of the question.

THE COURT: You do what, Mr. Casey?

MR. CASEY: I said I included—I objected before was finished with the question. I want to have my objection cover the latter part of his question also.

THE COURT: That objection will be sustained.

Q. Did you include the income from that shovel on your books and records of your personal income or your wife's income, your joint incomes or of the Ruston Company?

MR. CASEY: Objected to as not proper cross examination.

THE COURT: I will sustain the objection to that.

Q. How much did you pay for the shovel—how much did the shovel cost when it was bought, do you know that?

MR. CASEY: Objected to as not proper cross examination. It has no probative value.

THE COURT: Objection overruled.

A. I did not buy the shovel, sir.

Q. You don't know what it cost?

A. I wouldn't want to hazard a guess.

Q. You have been in this business for some years. Do shovels of that type ever cost over $20,000?

MR. CASEY: Objected to as not cross examination.

THE COURT: Objection overruled.

A. Sir, shovels can cost from $5,000 to half a million dollars.

Q. I am talking about that shovel.

A. Sir, I did not buy that shovel. Therefore I wouldn't know the price.

Q. But would a shovel of that type ever cost over $20,000?

MR. CASEY: Objected to as calling for a conclusion.

MR. TEITELBAUM: I am talking of the type of shovel it was at the time it was bought.

MR. CASEY: Objected to as calling for a conclusion on the part of the witness.

THE COURT: Better first ask him if he knows.

Q. Do you know, sir?

MR. CASEY: Objected to as not having been properly qualified.

THE COURT: That objection is overruled.

A. Will you please repeat your question, sir?

Q. Do you know what a shovel of the type that was rented to Perini Brothers would have cost at the time that shovel was bought?

A. Sir, in trying to answer that question I would have to know many varied trade makes of that type of shovel because the prices vary and therefore I am unable to give you the exact price of the shovel.

* * * * * * * *

ROBERT O. DIERKER, a witness called by the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name, sir?

A. Robert O. Dierker.

Q. Mr. Dierker, please speak into that contraption, so the jury can hear you.

A. Robert O. Dierker.

Q. Where do you live?

A. No. 9 Standish Boulevard, Mount Lebanon, Pittsburgh 29.

Q. What is your business or occupation?

A. I am president of the Duquesne Slag Products Company.

Q. And what is the Duquesne Slag Products Company?

A. The Duquesne Slag Products Company commercializes blast furnace slag produced by the various steel mills in this area—some of the various steelmills.

Q. Does it have distributing plants or crushing plants in relation thereto?

A. We have four crushing plants in this immediate area.

Q. Where are they?

A. One is at Aliquippa; one is at 4116 Second Avenue, Pittsburgh—

Q. Is that what is known as Brady Street?

A. No. Brady Street is a batching yard. It is not a slag plant, it is simply a distributing plant. One is at Buttermilk Hollow, in the Buttermilk Hollow Road, in West Mifflin Borough; and the other at Monessen, or Belle Vernon.

Q. In the course of your business does the Duquesne Slag Products Company handle and sell sand?

A. We handle sand in order to prepare concrete or for use in connection with sand, river sand.

Q. How long has the Duquesne Slag Products Company been in operation, sir?

A. Our charter reads 1908; I don't know the month.

Q. Has it been in business since that time?

A. Since 1908, yes, sir.

* * * * * * * *

Q. Did you have any conversation then relating to the job?

A. Oh, I can't recall—of course, it was six years ago—everything that went on. But basically, Mr. Stirone said to me, "I know some of these people pretty well in the Ragnar Benson Company, some of the officials." He said, "I may be able to help you get that contract" — "to help Rider Supply Company get that contract—or Rider Concrete." He said, "Do you suppose Mr. Rider would be interested in my giving him any help?" I told him I didn't know. And I can't say this definitely, but I believe Mr. Stirone asked me, "Would you like to ask Mr. Rider and see if he is interested?" And I told him I would, I would ask Mr. Rider. I left that point, and left this luncheon, whatever it might have been, came back to the office and called Mr. Rider by telephone. Shall I go from there?

Q. Just go on, sir.

A. I called Mr. Rider and told him—asked him if he was going to be in the next morning, told him I would like to see him about a matter. At the time our plant was going on. I frequently visited that site. And I often, very often, left from home and didn't go directly to the office, but came down the other way from the plant, see how the work was progressing. I saw Mr. Rider there and told him my conversation with Mr. Stirone. I told him he thought he might be able to help him, that he knew some people there; if he was interested, why,—Oh! I said that Mr. Stirone told me that if he could get that work he would want a sales commission. I told Mr. Rider I didn't know what the commission was, he didn't mention, I had no idea; but if he was at all interested in it, I would make the arrangements with Mr. Stirone where they could meet.

I came back down to the office—I asked Mr. Rider if he could meet Mr. Stirone the next day, if it suited Mr. Rider, if he was coming down or would want to come down.

I came back to the office and called Mr. Stirone. I said, "Mr. Rider is apparently interested in talking to you. Do you want to see him, and where—or when do you want to see him, and where?" He says, "How about tomorrow morning?" And I said, "Where?" He said, "why not make it your office?" He says, "He knows where that is. And"—he says—"this place I am is a little difficult to find. Why not make it at your place?" I says, "I will call Mr. Rider back, and unless you hear from me it will be that time tomorrow morning"—I don't recall what time it was.

The next morning I got a call from the receptionist and she said there was a Mr. Rider and Mr. Stirone in there. I had somebody in the office. And after a short delay they came up the stairs. Mr. Stirone was first and Mr. Rider second. I said to them, "Have you folks met?" And I might mention, incidentally, at the Carlton House Mr. Stirone said he had never met Mr. Rider. And Mr. Rider had told me when I was talking to him that he had never met Mr. Stirone, that is, when I talked to him in our plant. They came in the office, and I said—I believe this is about all—I said, "Mr. Rider, this is Mr. Stirone. He thinks he can help you. You fellows go from there." They made their own—I said nothing further.

Q. What did they say? Do you recall that?

A. Mr. Stirone said he knew some people very well in the Ragnar Benson, and he thought he could probably give him some assistance to get him that order. He says, "If I do get you that order, would you be willing to pay me a commission of fifty cents a cubic yard?" That is the first I had heard mention of this price per yard. Mr. Rider said—I don't know how long a time it was—he said he would be glad to have him talk for him. And with that I believe—

Q. Well, did the meeting break up after that?

A. There was one thing said there. Mr. Rider said to Mr. Stirone, "How do you want me to pay you?" Mr. Stirone said, "As far as I am concerned, this is an open and aboveboard, legitimate proposition." He says, "You pay me by check." He says, "I intend to take it off my income tax." And he says, "You, of course, will take it as a cost of sales—or sales cost." I believe that is pretty much what was said.

* * * * * * * *

Q. Now, were there any threats or intimidation used by Mr. Stirone in the course of that meeting?

A. No sir. Everything was—As I have said, there were no threats whatsoever made, there was no mention of any threats; there was no mention whatever.

* * * * * * * *

JACOB G. KASSAB, a witness in behalf of the defendant, having been duly sworn, testified as follows:

Direct Examination

BY MR. CASEY:

Q. What is your name?

A. Jacob Kassab.

Q. Where do you live?

A. Canonsburg.

Q. How long have you lived there?

A. Oh, approximately 15 years.

Q. What is your business or occupation?

A. Construction.

Q. With whom?

A. Ragnar Benson.

Q. What position do you hold with them?

A. Vice president.

Q. As vice president what are your duties in the area? How were you employed in 1951?

A. Overall charge of company activities out of the Pittsburgh office.

* * * * * * * *

Q. Well now, Mr. Kassab, in 1951 did you have any conversation with Nick Stirone with reference to the concrete on this job?

A. I did.

Q. Will you turn to the jury and tell them just what you know about it and what occurred?

THE COURT: Did you specify a date, Mr. Casey, or not?

MR. CASEY: I said in 1951.

THE COURT: Oh, I am sorry. That's what I didn't catch.

A. Well, in the negotiations of these bids we finally got the job, it was a problem of finding out who could best supply us. My superintendent on the job at the time was very insistent on setting up our own plant because of being sure of service. I myself was against it. However, having the responsibility of running the job, I did not, would not overrule him until I could convince him otherwise. Rider approached me, first by a bid, sending me a bid, I don't know if it was by telephone or in writing. It was by writing. I no longer have a copy of it. Then sometime after we got the job, within a few days, I would say, Stirone called me or saw me personally. I don't remember which it was and told me, asked me he'd appreciate everything being equal, if I would favor Rider with a job and I told him that the only way that I would favor him is if he would give, if he would wind up with the low bid on it. I wasn't giving my hand out as to what the bids were. I wasn't, not having had any experience with him in the business before, with Rider, I told Stirone I wasn't sure he could furnish the job and my man on the job was of the same opinion.

MR. TEITELBAUM: If it please the Court, I'd like any hearsay eliminated. Just what Mr. Kassab knows and said himself.

THE COURT: I think that's right.

MR. CASEY: Hearsay is the same as opinion.

A. I didn't follow you.

Q. I just want what you knew, not what anybody said or what somebody else thought.

A. Anyway, Stirone called me and I told him, I said that such was the case, so it was very shortly after, I don't know a day or two it might have been the same day and he called me back and told me that he was sure Rider could furnish the job and Rider come out to my house one evening. I can remember I was mowing the lawn and come in the house. I don't know if it was by invitation or whether it was just casually dropped by, and we went, him and I went in the den and talked and the wives stayed out in the living room and talked. On the way out, we discussed the job. In the meantime he was rather concerned about the fact that his competitor being a much larger concern, pressure would be brought on to give it to them irregardless of their price. I told him he didn't have to worry about that. However, I still had to sell my man on the job, that he was capable of handling the job, I still had that to do. As he was leaving, I again told him I didn't think he had anything to worry about, and it wasn't—oh, it was sometime later before I confirmed to him, I checked my records here just the other day of the telephone calls and I just had brought to me by messenger, I didn't know I was going to be called this afternoon, either the 19th, the 20th or the 24th of September, I think it was, the telephone record will show, I called him and confirmed the fact that he had the job and on the 26th of September, I think we confirmed it in writing. We had originally figured $12 for the job, which our bid showed and I produced the files to Mr. Stiles of the F.B.I. and showed him and we bought it though at eleven-seventy-five from Rider, a yard.

* * * * * * * * *

THE COURT: That's all, Mr. Rider.
MR. CASEY: Defendant again rests.

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REBUTTAL TESTIMONY

* * * * * * * * *

GEORGE THOMAS DOHERTY, a witness in behalf of the Government, having been previously sworn, took the stand.

MR. CASEY: Since Mr. Doherty has been sworn and identified previously, I'd ask counsel to make an offer at Side Bar.

AT SIDE BAR

MR. TEITELBAUM: I offer this witness for the purpose of proving that at the same time as the matter here being tried took place at relatively the same time, Mr. Doherty was compelled by the use of fear to give money to Nicholas Stirone.

MR. PALETTA: To make payments.

MR. TEITELBAUM: Rather — that's right, he was asked by Nick Stirone to make payments to him and required to give things of value.

THE COURT: Is that your entire offer? That is your offer?

MR. TEITELBAUM: That is my offer now, the purpose of my offer, why I think it is admissable.

THE COURT: I just want your reason. We will give you an opportunity to argue this.

MR. TEITELBAUM: I intend to prove this was a part of the same design, scheme or plan as was used, that the same design, scheme or plan as was used in the instant case was also used in that case.

I offer it further for the purpose of proving motive, intent and lack of accident or mistake. I point out to the Court that the defense has now been put in. The same offer was made in our opening in our case in chief. At that time the Court ruled that it would not be admitted at that time but could be re-submitted in rebuttal.

MR. CASEY: It is not necessary—

THE COURT: Just a moment. If you will go back to see my ruling on it, you will find that I said at this time your offer is denied or refused.

MR. TEITELBAUM: I see. All right.

THE COURT: I said nothing about rebuttal in the record.

MR. TEITELBAUM: All right, sir. I am not trying to use anything along that line. I meant to say that now the defense has put in evidence through two witnesses, in addition to Stirone, and all three of whom have contended that this was a legitimate business transaction. In effect they claim it was a commission paid to Stirone for obtaining a contract for the sale of ready-mixed concrete by using his influence with Ragnar Benson. Mr. Dierker and Mr.

Kassab have an aura of respectability about them.

MR. CASEY: I presumed them to be respectable.

MR. TEITELBAUM: Mr. Dierker has corroborated Mr. Stirone. He has corroborated him in the principal contention that he makes. Mr. Kassab has added a certain verity to it. Therefore I submit that the circumstances are quite different that when the Court ruled originally and that now it becomes not only relevant, it always has been relevant, but now it becomes very important that the Court permit this to go in evidence as it is the Court's discretion to do so, that the jury may have the entire picture of this situation and type of picture and not of an isolated instance that occurred separate and apart from the entire behavior of the man Stirone.

MR. CASEY: If the Court please, the indictment that this defendant is called on to meet is extortion on a day certain or within a period certain. I object to the offer as being res inter alias acta, an independent crime which would only tend to prejudice the defendant in the eyes of the jury and having no probative value as far as the proof under the indictment is concerned.

(Discussion off record.)

MR. CASEY: It is further objected as this witness produced here will be a prosecuting witness in an indictment in the United States District Court for the Western District of Pennsylvania concerning which the United States Attorney made a motion to consolidate indictments for trial and which motion is refused by Judge Herbert Sorg.

It is further objected to on the basis that to permit this testimony, that the defendant would be unable to meet the testimony of the witness without extended investigation and in order to prepare a defense to a separate and independent matter.

MR. TEITELBAUM: May I put on the record we have no prosecuting witnesses in Federal Court. The Government is the prosecuting party in all cases.

MR. CASEY: I mean or prosecuting witness.

THE COURT: Members of the jury, we will at this point adjourn for lunch until 1:45.

(Whereupon a recess was taken until 1:45 p.m.)

(Change of reporters.)

AFTERNOON SESSION 1:45 p.m.

GEORGE THOMAS DOHERTY resumes the stand.

MR. CASEY: May we see the Court at side bar, please?

THE COURT: Certainly.

(At side bar)

MR. CASEY: In relation to the offer as far as the witness Doherty is concerned, I would like to add to my objection the fact that there had been a previous objection filed by the defendant relating to the same matters, the offer of the Government, which was sustained by Judge Sorg on the objection to the consolidation, on the same basis.

THE COURT: Now, for the purpose of the record, the defendant's objections to the testimony of Mr. Doherty will be overruled.

Direct Examination (continued)

BY MR. TEITELBAUM:

Q. Mr. Doherty, where are you from?

A. Dearborn, Michigan.

Q. What is your business?

A. I am in the demolition business.

Q. Now, for the benefit of the members of the jury and myself, what is the demolition business?

A. The wrecking business, demolishing buildings, removal of buildings and structures.

Q. Now, back in 1952 did you have a contract for demolition in the city of Pittsburgh?

A. I did.

Q. And what did you contract to demolish?

A. The Carnegie Building, for May Department Stores.

Q. Do you recall when in 1952 that was?

A. The middle of March of 1952.

Q. And is that when you undertook your work, commenced your work?

A. Yes, I did; approximately.

Q. After your arrival in Pittsburgh to undertake that work did you meet the defendant, Nicholas Stirone?

A. Yes, I did.

Q. Will you tell the Court and jury what the circumstances were under which you met Mr. Stirone?

A. I was approached by Mr. Al Buncher of Buncher Scrap, which I had contracted to sell the scrap iron from that building, and I was told by Mr. Buncher that Mr. Stirone wanted to speak to me. And I made the appointment with him at the—at a club room over at the William Penn. And at the time we arrived, that is, Mr. Buncher and myself, Mr. Stirone was in the club room, with the doors closed. It was a—well, a club room, but it was a private room, it was not open to the public there. And I was introduced to Mr. Stirone, and he asked me if I had spoke to anybody in regards to the contract on the Carnegie Building—

Q. Now, Mr. Doherty, did you know who Mr. Stirone was?

A. At that time I was told who Mr. Stirone was.

Q. Proceed.

A. And I was asked by Mr. Stirone if I had spoken to anyone in regards to the bid on the job. And I said, "No. I am individually operating in this town, and I feel that my own judgment is what I rely on." He said, "Well, you know in this town here"—he said—"before you submit a bid you should talk to other people, rather than just taking it upon yourself to just move into this town." And I said, "Well, I see no reason why I should. In ten years I have been operating, I felt if I cared to bid on a job I bid on it, and it was up to me to do the job and no one else." And he said, "Well, you know I have a price tag of thirty-five thousand dollars on that job." I said, "What do you mean, thirty-five thousand dollars?" He said, "Well, the contractors here and myself have made an agreement that there is a thirty-five thousand take on this job." I said, "Well,"—I said—"what do you want from me?" I said, "I haven't received that amount in contract price to do the job." "Well," he said, "it is too bad that you didn't speak to me first." I said, "Well,"—I said—"I see no reason why it is too bad." I said, "I've got to do the job and no one else." He said, "Well, in this town you talk to me first." I said, "Well, what do you want from me?" "Well," he said, like I said before, I've got a thirty-five thousand dollar price tag on that job." I said, "Well, I think you've got rocks in your head if you are looking for thirty-five thousand dollars from me." And after that statement was made he said, "Well," —he said—"you are a pretty cocky little guy, aren't you?" He said, "Maybe we can teach you a few things a little bit differently. And I said, well, I would have to be shown. And I walked in this town with the attitude that when I cared to undertake my work I would do it myself, and that is exactly the way I felt when I walked out.

It was shortly after that time that my opinion was changed, due to the labor they was supplying me, due to the circumstances on the job and what did occur on the job. I felt that it was only "go his way or go broke". I had $270,000 performance bond on the job. I was tied up to a point where I could not say, "Well, I can not perform your contract." I had everything that I had earned throughout my life tied up in this thing.

So about seven or eight days after I did start Mr. Al Buncher approached me again. He said, "George, have you changed your mind in any way?" I said, "Well, I will listen to reason." So there was another meeting, which Mr. Stirone did not attend. But the price was reduced from a thirty-five thousand dollar cash payment to a ten thousand cash payment. I did agree to pay ten thousand dollars, but I could not pay it in cash. And my labor troubles were to be taken care of immediately upon me agreeing to pay ten thousand dollars. I consented to pay in the form of the metals from the job. The metals consisted of approximately forty thousand dollars worth of copper, brass and lead. And it was agreed that I send my metals to the Buncher Company, which had purchased the scrap metals, as well as all the iron, from this job. And they were not to give me shipping receipts; it was to be on a piece of scrap paper only.

Q. Now, did Mr. Stirone agree to that?

A. Mr. Stirone did agree to that. It was understood between Stirone, Al Buncher and myself.

Q. I see. And did you do that?

A. I did do that.

Q. Thank you.

MR. TEITELBAUM: You may cross examine.

CROSS EXAMINATION

BY MR. CASEY:

Q. Were there any members of Local 1058 on that job?

A. 1058—the Local that was involved at the time was 178. And Mr. Stirone was—I had occasion to meet at the Local 178 office, and he was sitting behind the desk of that Local the second time I met Mr. Stirone.

Q. What sort of labor union was involved? What sort of craft?

A. The general labor. They have it classified here, I believe, under demolition or wreckers.

Q. And where was this place you say you saw Mr. Stirone behind a desk?

A. At the office of 178, I believe that Local was at the time.

Q. Do you know where it was?

A. Yes, sir. One block beyond Grant Street, a little bit to the left.

Q. Off of Fifth?

A. Off of Fifth, yes, sir.

Q. Off of Fifth.

A. Yes, sir.

Q. And when was it that you were over there and saw Mr. Stirone behind the desk?

A. Possibly the middle or the latter part of April. I am not sure of the time, but I know—I can say definitely that it was shortly after I had first met Mr. Stirone at the club room of the William Penn.

Q. When you were at the club room of the William Penn were you a guest of the hotel at that time?

A. I don't think I was. I believe I arrived in town here on a Monday morning, and I had not yet taken my room.

Q. Between that time and the next time, that you say you saw Mr. Stirone sitting behind a desk at Local 178, were you registered in the Hotel William Penn?

A. No, sir, I don't believe I was. I believe I took an apartment out on Winebiddle.

Q. And do you know the number there, please?

A. No, I don't, sir.

Q. Was it an apartment building with more than one apartment in it?

A. Yes, it was.

Q. And during that time, when you say you saw Mr. Stirone at Local 178, is when you lived—took an apartment out on this other street?

A. I cannot be sure when I took that apartment, sir; I believe it was at that time.

Q. Now, when you say you met Mr. Stirone at the William Penn Hotel did he introduce himself, or how was he introduced to you?

A. Mr. Buncher—Mr. Al Buncher introduced Mr. Stirone to me at that time.

Q. And you didn't know him before that?

A. No, sir.

Q. Did you have the contract on the building at that time?

A. Yes; yes, I did, sir.

Q. To demolish it?

A. Yes, sir. I was not approached by Mr. Stirone or Mr. Buncher until after I had put up my performance bond. I was not approached by Mr. Stirone, through Mr. Buncher, until after I was tied up to a point where I couldn't back off.

Q. And whom did you deal with—what company was it? The U.S. Steel Company?

A. No, sir; May Department Stores.

Q. And what was the date of that contract?

A. Approximately March 23 of 1952, or the 6th of April.

Q. Now, when Al Buncher—did he take you to this club room over at the William Penn Hotel? Did you know whom you were going to meet there at the time?

A. Yes, I did. I was told I was going to meet Mr. Stirone at the club room there

Q. Were there any other persons present except you three?

A. No, sir.

Q. How did you happen to meet Mr. Al Buncher at that time?

A. I had sold Mr. Buncher the scrap from the Carnegie Building.

Q. Before you had removed it?

A. That's right.

Q. During the time that there was any conversation concerning price tag—where was this held, and how did it occur?

A. It was held in the club room there.

Q. Was it at a table or was it a bar—

A. No, sir, it was not a bar. It was a club room, I believe with lounge chairs around the outside wall, and magazine racks and lamps; I mean just a nice, comfortable room.

Q. Were you standing or were you seated? And if so, how were you located, and how close to each other?

A. Well, it was—as far as distance is concerned, it was within a distance we could carry on a conversation, a business conversation, not too loud, not too quiet.

Q. Who is "we"?

A. Mr. Stirone, Mr. Buncher and myself.

Q. So that each of you could hear the other?

A. That's correct.

Q. Wha ttime of day was it, do you remember that?

A. I believe it was shortly after lunch. I can't be sure of the time, but I believe it was shortly after lunch.

Q. Did you have your lunch at this place?

A. No, I didn't.

Q. Did you have your lunch with Mr. Buncher that day?

A. No.

Q. Where did you meet Mr. Buncher?

A. At the wrecking operation.

Q. And then you walked from there over to the William Penn Hotel?

A. I did.

Q. Had any of the wrecking operations started at the time of this meeting, as far as you were concerned?

A. Oh, yes.

Q. What had you done?

A. Well, we commenced stripping the building with labor that I had brought in from Michigan. I had four men with me, and I believe I had hired a couple of men from the Local here, and we had started to remove doors, the office partitioning, and the like.

Q. And how did you arrange for the hiring of those four men from the Local?

A. Upon bidding, I had called up the Local and inquired in regards to wage rates, conditions; and I had heard previous to my calling that Pittsburgh was a pretty tough town to get along in, and—

Q. You mean then you called from your home?

A. No, sir; right here.

Q. After you got here?

A. I was here from—I came in originally to bid this job in January of 1952, possibly before that, and it took approximately two months or better for research in regards to contents of the building; and at the time that I originally entered Pittsburgh the Carnegie Building was still in operation, and I looked through the building—after checking the building over, along with the assistant that I had with me, I went to the engineer's room in the basement, got the original plans of the building, also the remodeling plans, and took out the figures so far as quantity; and every detail of the building that I could possibly gain, before I submitted my bid.

Q. And on that first occasion when you came here in January, when you were doing all this did you come in contact with Al Buncher?

A. No, I did not.

Q. When did you first come in contact with him?

A. Only after I had contacted the Alpha Steel—and also a Mr. Goldman—which operates a scrap iron place either here or in Monongahela. And it was only after I was talking very seriously in regards to the sale of scrap to outside people, because I thought I could do a little bit better than I could possibly locally; and it was only within two days of closing the deal with Alpha Scrap, I believe—I am not sure of the name of the company I did contact, but it was the competitor of the Buncher Company—and we were ready to close the deal, terms and conditions were satisfactory to me, and for a reason unbeknown to myself the deal stopped very abruptly.

Q. You mean the negotiations between you and the May Company?

A. No, sir; I already had a contract with the May Company. It was the negotiations that I had with the Scrap Company.

Q. Well, what was the purpose of those negotiations?

A. To sell them the scrap.

Q. Oh, I see; I am sorry. And they stopped?

A. Yes, sir. Everything—

Q. And that was not with Buncher?

A. No, sir. That was with Alpha Scrap, or Goldman Scrap. I was with them, a matter of signing my signature to the deal, a fifty-thousand dollar certified check they had on hand, and something happened. What it was, I don't know. I did hear later, but it is only hearsay, what had taken place and the reason why they did not purchase the scrap or go through with the deal. And then the Bunchers wanted to know why they did not have the opportunity to buy too, and I did talk to them, and I did eventually sell the scrap to Buncher.

Q. Did you have a written agreement with Buncher Brothers?

A. I did.

Q. Can you tell me what time that agreement was entered into?

A. It was sometime between the signing of the contract with May Department Stores and the time I commenced work there.

Q. And you say at the time you saw Mr. Stirone at this club room in the William Penn Hotel, that was after the date of your starting to demolish that building?

A. Very shortly thereafter, yes, sir.

Q. Now, was that the only conference you had with Mr. Stirone was on that occasion?

A. No, sir.

Q. After the occasion in the William Penn Hotel, in the club room, of which you speak, when was the next occasion of your talking with him?

A. At the office of Local 178.

Q. Who was present then?

A. Mr. Stirone, I believe Mr. Huff.

Q. Would that be Larry Huff?

A. That's correct.

Q. Is it a colored gentleman?

A. Yes, sir.

Q. Now, how long after the time at the William Penn Hotel was that?

A. Six weeks—six weeks to two months.

Q. Two months?

A. Six weeks to two months.

Q. And then when was the next conversation you had with Mr. Stirone?

A. After that, none.

Q. Just those two conversations?

A. Yes, sir.

Q. Now, on the first conversation you say there was mention of price tag. Is that right?

A. That's right.

Q. Now, on the second occasion there were only the three, at this Local 178?

A. That I can remember

Q. And no one was with you, none of your firm or either of the two Bunchers?

A. I was brought over to Local 178 by request.

Q. And whom did you go with?

A. I believe I went with Mr. Huff, or one of the representatives of that Local.

Q. Where did you go from—

A. From the Carnegie Building. I walked over to the Local hall.

Q. What time of the day was that?

A. I do not remember.

Q. Well now, at that time over there was any mention made of price tag?

A. Price tag, no. I was asked if I had learned that I was not cocky as I thought I was when I originally entered town. And I said, "Well, I have learned a few things, but so far as how I feel about them I will keep that to myself until later."

Q. How far along had the demolition of the building progressed at that time?

A. To the point where the penthouse portion of the building was removed, which was done in a matter of two and a half to three weeks, and at the point where there was ten thousand dollars worth of metals delivered to Buncher.

Q. That is, the metals which you say—copper, brass and lead?

A. Yes, sir.

Q. Is that all that was delivered to Buncher, just that type of metal?

A. There was concentration directed strictly on the metals, in order to pay Mr. Stirone.

Q. And that was the nonferrous metals?

A. That right.

Q. And was that copper, brass and lead delivered to the Buncher Brothers; and if so, how?

A. It was delivered to the Buncher Brothers on truck, on their truck.

Q. On their truck. And you don't know where it went to; it moved out of your—

A. I knew where it went to.
Q. How did you know that?
A. It went to the Bunchers' yard.
Q. And where is that?
A. Over on Shore Avenue.
Q. On the North Side, Pittsburgh?
A. That's right.

Q. Well now, after the visit to 178, now long after that was it before you were approached by Al Buncher?

A. Al Buncher continuously, without a let-up, had contacted me—well, just repeatedly, after I had paid the original ten thousand dollars in metals. "here was also, after the starting of the job, a large article in the paper in regards to the removal of the building, and we had papers over at the office at the time, and I don't know the exact date the picture appeared, but the newspapers took the complete picture of the building, and the historical points of it, and also a write-up on the fact that I was from Dearborn, Michigan, and what I had thought of the building and how I intended to demolish the building. And Mr. Buncher had came in probably eleven or eleven-thirty that very day that this article appeared in the paper, and he took his pencil out of his pocket and he put "$50,000" on the upper part of this paper. And I said, "What's that for, Al?" "Well," he said, "that's what it cost you to explain what is happening to the metals and your iron from this building." And I said, "Why?" And he said, "Well, the iron workers will be in on you." "Well," I said, "I can probably do better with the iron workers than I have been able to do with the laborers, irregardless."

Well, that was as far as that went. And Mr. Buncher—after receiving the metals, I asked him if Mr. Stirone had received his money. He said yes. He said "Everything is satisfactory." I said, "Do you mean to tell me I am going to be able to tell the laborers what to do now and have it done?" He said, "I see no reason why not."

Well, it was shortly thereafter that time that that is when I did go over to the hall, because I had a complaint in regards to the performance of the laborers that I had had supplied, by Local 178, and I was told at that time that ten thousand dollars was only the cash payment. I said, "So what do you want from me?" And that is when it was brought up indirectly that the job was marked for a thirty-five thousand dollar shakedown.

Q. And did Buncher say that?

A. No, sir. Mr. Stirone said that.

Q. That is, on the first occasion?

A. The second occasion.

Q. At the Union office?

A. That's right.

Q. Now, you had two conversations concerning thirty-five thousand dollars, then?

A. In a roundabout way. It was very definitely there in the club room. From there on out there was nothing definitely established to me in regards to what Mr. Stirone had to say to me, it was always roundabout. It was leading to it, do any way you want. And that is exactly the way it was put to me.

Q. On this second occasion, in this Local 178 office, where was this desk that Mr. Stirone was behind?

A. As you walk in the building you enter a flight of stairs which leads straight up, if I am not mistaken. I made a turn to my left, and the office is to the left of the stair well as you walk in, over to the left, facing this wall (indicating).

Q. As you get to the floor that you want to be on you turn to the left to be in the office. Is that right?

A. I recall that the office was to the left, if I am not mistaken.

Q. And was there only one office there and only one desk, or were there other employees around?

A. In the office that I entered there was no one else there but Mr. Stirone in that room.

Q. Was that—as soon as you come in off the hall, was that the room where you found this desk and found Mr. Stirone?

A. That's right. There was a lot of laborers out in front of the building and also in the hall of the building.

Q. On the stair well?

A. Yes.

Q. And after you got up there you opened the door, and inside was a room with a desk in it, and Mr. Stirone was in there by himself; and you came over there with Mr. Larry Huff?

A. I believe it was Mr. Huff. I can't be certain who I went in there with, but I know it was a representative of the Local at that time.

Q. And at that time there was talk again about thirty-five thousand dollars?

A. There was talk on being satisfied with the ten thousand payment, that it was received. And there was roundabout discussion about "What about the rest?"

Q. And did you accede to it at that time?

A. No, definitely not. I never discussed it any further than that, other than the fact that I just couldn't see it. I received the contract price, and the asking shakedown was in excess of the contract price.

Q. And that was after you had signed this agreement with the Buncher Company?

A. After I had made my commitments, both to the May Department Stores as well as selling the scrap to the Buncher Company.

Q. Now then, it was after that time then that you say Buncher came to you and you had another conversation with him about the copper, brass and lead, which you say was to go to Buncher at free, and there would be no invoice for it and no payment made by Buncher to you?

A. I made the statement that all my copper, brass and lead was the actual aim of Mr. Stirone and Mr.

Buncher; that was the shakedown price.

Q. Now, did Buncher get other metal out of it than the brass, copper and lead?

A. They received all the iron from the building, structural steel as well as the scrap iron. It came pretty close to four thousand ton.

Q. Well, at that time when you started you had a demolition permit from the City of Pittsburgh, whatever was necessary.

A. (Witness makes no answer).

Q. Now, so I have this clear in my mind: It was Al Buncher and you that made the agreement relative to this copper, brass and lead going to ~~Buncher on behalf~~ of Nicholas Stirone. Is that it?

A. I beg your pardon?

Q. I said, was the agreement reached between you and Buncher—Al Buncher you say — that was the agreement reached between you and him, that the copper, brass and lead, and nonferrous metals from the Carnegie Building, was to go to Buncher Brothers' North Side yard, and they weren't to pay for it, but they were to pay Mr. Stirone. Is that it?

A. With the approval of Mr. Stirone, yes.

Q. And you and Buncher made the agreement?

A. Along with Mr. Stirone.

Q. Where was Mr. Stirone then?

A. In the club room.

Q. At the first meeting?

A. That's right.

Q. And was the only time the question of copper, brass and lead, the nonferrous metals, was discussed on the original occasion?

A. The original occasion cash was discussed. There was no such thing as talking about the metals. I mean he wanted cash.

Q. Now, when were the metals discussed?

A. The metals were discussed after I had refused to write out a check for cash and take it to the bank and cash it, bring my money back.

Q. Was that on the first occasion?

A. That's right.

Q. That was in the presence of Al Buncher?

A. That's right.

Q. Now, when you refused to do that who brought up the question of copper, brass and lead?

A. I believe it was discussed, both with me, if I was willing to go along with the delivery of my metals and Mr. Stirone receive the cash from those metals until he was satisfied.

Q. Did you and Mr. Buncher discuss about that?

A. Yes, sir.

Q. And you didn't agree at that time?

A. Not originally, no. It took about—oh, six weeks to bring me around to the payoff

Q. And you were brought around by Mr. Buncher?

A. No; by the activities of the labor that I was supplied with.

Q. On the job itself?

A. That's right.

Q. Did you then voluntarily say—or go to Mr. Stirone or Mr. Buncher and say, "Go ahead with that arrangement"?

A. No, sir. They kept asking me how things were.

Q. Who kept asking you?

A. Mr. Buncher, speaking for Mr. Stirone.

Q. At any rate, it was Al Buncher who was doing it?

A. He was asking me how things were coming, and he was always adding the fact that Nick would like to know how things are going.

Q. Why would you sign a contract with Buncher? You were sending him your metals anyway.

A. I was sending my metals, yes.

Q. You were sending your nonferrous metals, copper, brass and lead, during that time?

A. No, sir. It was only after the point—originally, when I started to wreck, I had labor that was not removing the brass, lead or copper. It was only after the fifth or sixth week, when I started to hit the roof of that building, when I could actually tell what the labor was or was not going to do. And after judging their performance of what I asked them to do—what I directed them to do, the labor was lagging to a point where either I had to go along with the demands or I just had to say to myself I might as well quit now. And only then did I consider the shakedown metals, only after I agreed to pay off.

Q. But you stored it in your building?

A. No, sir. There was no metals produced from that job. I was stripping the floors, the casings, the doors, the plumbing, office partitioning, and that was all being removed from the penthouse floor right to the main lobby

Q. Well, that labor wasn't up to the standard which you had been accustomed to. Is that it?

A. Definitely not.

Q. Well now, when you finally came to the point of giving your assent to this arrangement, as you say, just tell me again how that came about, who said it. How was your assent carried out, and how did the first copper, brass and lead move to Buncher Brothers, how soon after?

A. Well, it was through the checking of Mr. Al Buncher to find out my position that I had taken and to find out if I had changed my mind during the course of my commencing to actually get into the demolition of this building, because I had to prepare bridges, scaffolding and fans and such on the building, that it did take quite some time to set that up. So actual production of metals was quite some time after I had spoken to Mr. Stirone in the club room of the William Penn. So therefore there was no question of me shipping metals of any kind. It took quite some time to set up the job before that could be done.

And I had labor at that time—like I say, I brought men from Detroit, and also I hired men from the Local hall, and the men from the Local hall, there was good, there was bad—I mean that goes with all labor. And it was at the point where I was ready to move—where the labor was not ready to go along with my request. And only then did I find I had a pressure. I mean when a man is in the contracting business he can tell when pressure is put on him. There was definitely pressure put on me.

Q. You mean from the laborers themselves?

A. From the laborers themselves.

Q. What about Al Buncher?

A. Well, he was always asking me how things were going. He was keeping very close touch, to—am I ready to break or am I ready to go some more?

Q. And then there came a time when—

A. When I was broke.

Q. Yes. And did you tell Al Buncher?

A. I told Al I was ready to go along with Nick's demands.

Q. And what did Al say?

A. Al says, "Okay. Let's go."

Q. Meaning—

A. That is when the metals started to go out.

Q. After you told Al you were ready to go the metals started moving over to Buncher Brothers?

A. About six weeks.

Q. Now, did you bill, or did you send over an invoice, so much per pound or ton?

A. No. I sent a man along with each and every truck.

Q. And that man, was he your foreman?

A. No; he was the office man.

Q. What was his name?

A. Bernie Smith.

Q. Where does he live?

A. I do not know.

Q. Was he one of the men you brought from Detroit?

A. No, sir.

Q. How long after you were in Pittsburgh was it that you hired him, if you hired him?

A. Shortly thereafter.

Q. How old a man was he?

A. Around twenty-five, twenty-six.

Q. Where would your payroll records be for the year 1952?

A. In Detroit.

Q. Do you keep Social Security numbers and keep those records of your employees?

A. I do.

Q. As far as Bernie Smith is concerned, now you don't know where he is?

A. No.

Q. How long after you left Pittsburgh did he sever relations with you?

A. Bernie left approximately a month and a half to two months before I completed the job.

Q. What did he do? Join the Service or something like that?

A. No. He knew the shape that I was in, and his wages were hurting me at the time, and he obtained work elsewhere.

Q. What were you doing, losing money on the job?

A. Continuously.

Q. That is that job that had the spiral staircase well up at the top?

A. That's right

Q. That was a difficult job too, wasn't it?

A. Not too bad.

Q. You had had lots of experience in the demolition business before you got to that point?

A. Reasonably, enough to know what I wanted. I knew what I was doing.

Q. At any event, during the course of your labor difficulty Mr. Buncher kept inquiring how you were doing, and finally you told him that you were ready to pay ten thousand dollars. Is that what you said?

A. Mr. Buncher was asking me if I was ready to come around to the demands. It wasn't a case of me willingly saying, "Well, here, Mr. Buncher, you can deliver ten thousand dollars to Mr. Stirone." It was a case of me being forced into a play and I had no choice—because I had ten years' work behind me, $270,000 performance bond, that I had my home and everything I owned put up in order to perform that, because that is something that we definitely and positively do on every contract you sign, that you have to put up a performance bond, that we guarantee our work to be done.

Q. In any event, sir, your arrangement concerning the sending of the nonferrous metals, the brass, copper and lead, to Buncher Brothers for free as far as you and Buncher Brothers were concerned was between you and Al Buncher. Is that right?

A. And Mr. Stirone.

Q. In the first two instances, at the club and at the Union hall?

A. To put it, and the only way I understood the deal at the time, in the way it is put: You are serving as a spokesman for a man now. Mr. Buncher was then serving as spokesman for Mr. Stirone. Now, I am putting that that way to you, and that is the only way I can decipher what was occurring at the time I was being taken for a ride.

Q. So the negotiations when you were being taken for a ride—as you put it—were carried on through Buncher and by Buncher?

A. That's right.

MR. CASEY: that is all, sir.

Redirect Examination

BY MR. TEITELBAUM:

Q. Was Stirone present when they were being carried out?

A. He was present at two occasions only.

Q. Thank you.

Recross Examination

BY MR. CASEY:

Q. On those two occasions, was Mr. Buncher present on those two?

A. No, sir; only one.

Q. The first one, at the William Penn Hotel?

A. Correct.

MR. CASEY: that is all.

ANDREW HAWTHORNE, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Mr. Hawthorne, what business were you in in 1952?

A. Demolition business.

MR. CASEY: What is his name?

MR. TEITELBAUM: Oh, I'm sorry.

Q. State your full name.

A. Andrew Hawthorne.

Q. And your residence?

A. Philadelphia, Pennsylvania.

MR. CASEY: May I have now an offer on this man?

(At side bar)

MR. TEITELBAUM: I intend to show by this man that when he came to Pittsburgh Nicholas Stirone—he met Stirone, Stirone asked him for money, and he gave him money.

I want to point out that there was no threat made to this man at all, and he states that he gave him the money because he knew that it was a shakedown, and he knew what was happening to Doherty down the street. That is his testimony.

THE COURT: For what purpose do you offer it?

MR. TEITELBAUM: For the same purpose as I offered that of Doherty.

MR. CASEY: May I have the same objection as to the previous witness?

THE COURT (to reporter): Will you note for Mr. Casey the same objection to the testimony of Mr. Hawthorne that he put on the record to the testimony of Mr. Doherty? And the Court will overrule the objection.

(In open court)

Q. By whom were you employed in 1952?

A. By Robert Hawthorne, Incorporated, contractors.

Q. Do you know who owns the Robert Hawthorne, Incorporated?

A. Yes, sir; my father.

Q. And did Robert Hawthorne, Incorporated, to your knowledge, have a contract in Pittsburgh?

A. Yes.

Q. What was that contract?

A. To demolish the Peoples Gas Company building and a group of buildings between Fifth and Sixth and between William Penn Way and Smithfield Avenue, where now stands Mellon Park and the parking garage.

Q. And what did you have to do with that contract?

A. I was the estimator and general superintendent.

Q. And do you recall when in 1952 you started that job?

A. Yes; just about July.

Q. After you came to Pittsburgh and undertook your task did you meet Nicholas Stirone?

A. Yes.

Q. Did Mr. Stirone ever ask you for any money?

A. Yes.

Q. Did you give him any money?

A. Yes.

Q. How much?

A. A thousand dollars.

Q. And was that the total sum that you gave him while you were here?

A. No. That was the biggest lump. There was several thousand dollars that we gave to Mr. Stirone.

Q. Why did you give it to him?

A. Well, the reason for it was, as Mr. Stirone put it—it was always a reason, whether it was for welfare fund, for political purposes, or for some reason. There was always some—

Q. Why did you give it to him?

A. Well, I gave it to him because I felt that I had to.

Q. Why did you feel—

A. Well, I had heard that—in fact I had seen—I could look down the street and see Mr. Doherty's job, and I seen the procedure of the work, and I thought it would be best to go along with the crowd.

MR. TEITELBAUM: You may cross examine.

Cross Examination

BY MR. CASEY:

Q. You thought it would be best to go along with the crowd?

A. Go along with the routine, sir; you know.

Q. Is your name Robert—

A. My name is Andrew Hawthorne.

Q. Andrew Hawthorne?

A. Yes, sir.

Q. And who is Robert Hawthorne?

A. It is my father.

Q. And what is your company?

A. Demolition contractors.

Q. And where do you live?

A. Philadelphia, Pennsylvania.

Q. And you say you are vice president and superintendent—

A. At that time I was, sir; not any longer.

Q. You are not now?

A. No.

Q. Well, how does it come that you met Nick Stirone?

A. I met Nick through a friend, through a mutual friend.

Q. Who was that?

A. A fellow named Joe Labovitz.

Q. And who was he?

A. At that time I believe he was in the scrap and steel business in Philadelphia. I might have met him with Nick or at one time Nick sent for me to come to his office. I met him in his office also.

Q. Now, you tell us here that you gave Nick Stirone a thousand dollars for political purposes or matters such as that.

A. I don't remember, Mr. Casey, just how that was stated. At that time I do know there was—I don't know whether it was—I think it was a Presidential election going on, or something like that, and I am pretty sure that is what it was—

Q. You understood it was a political contribution?

A. That's right. Either that, Mr. Casey, or something along those lines. I just don't remember which. it was that or welfare fund. It was one or the other. I just don't remember.

Q. But it wasn't any money to go personally to Mr Stirone, was it?

A. Mr. Stirone didn't say that, no.

Q. He never said it was money personally for him?

A. No, he didn't.

Q. You say for those reasons, such as welfare or political, you gave him several thousand dollars?

A. Yes, sir.

Q. Now, what was the occasion of how that came about? Were you pretty friendly?

A. Well, friendly as far as labor conditions were concerned. We were doing a job there, and Mr. Stirone was as far as I know, was the boss. I used to have lunch at the William in a little room And pretty friendly, I would say.

Q. Why did you say you felt you had to give him this money?

A. Well, about that time Mr. Doherty was raising a little Cain, and I just thought it would be best to go along.

Q. And there were no threats or intimidation made to you?

A. No.

Q. Mr. Stirone just asked you for the money and you gave it to him?

A. That's right.

Q. Now, at that time you were down on the Point demolition. Is that right? The Point Park.

A. No. We had just about finished nothing happened on the Point. There was no—I hadn't met Mr. Stirone unit I just about the end of the Point job and pretty nea the beginning of the—

Q. Mellon Park.

A. —Mellon Park.

Q. And how long had you been in Pittsburgh before you met Mr. Stirone personally?

A. About eight months.

Q. Well, how did you come to meet him?

A. I believe the first time—I only came to the job about once a week up here; I had a superintendent running the job. To the best of my knowledge, the first time I met Mr. Stirone was toward the end of the Point Park job or just at the beginning—the both jobs ran right into the other.

Q. What was the occasion of meeting him? Did you have any reason?

A. No, nothing special at that time; outside of Mr. Stirone told me to be sure the next time that I do any work to see him in regards to labor, and so forth, and I said that I would.

Q. Well, didn't you go to him and ask him to see if he couldn't get you some good men for demolition jobs?

A. No. We had—our men was all right. I didn't have to go to Mr. Stirone.

Q. You never mentioned that to him at all?

A. No.

Q. Did you have much of a conversation when you first met Mr. Stirone, how long it was?

A. No. The extent of the conversation was confined to the job, and a meeting as far as labor and rates and contract was concerned, and that's about the extent of it.

Q. Well, who was the Union man that would take care of your job over at the Point Park or the Mellon Park?

A. Larry Huff was the Union's representative.

Q. And he would go down to the job regularly, and you didn't have any trouble on that job, did you?

A. No, sir.

Q. Well, as I gather your testimony now, sir, Nick Stirone just asked you for money for political or other reasons, no demands made on you?

A. No, no demands.

Q. And you weren't paying—were you paying that money under fear of losing?

A. No. I was paying the money because it was—I paid it, that's all.

Q. And you paid it because Mr. Stirone asked you for the purpose that was involved?

A. That's right. There was always a reason for the money.

Q. And that reason was it was to go to Nick Stirone personally?

A. No. Stirone made that point, that the money wasn't for him personally.

Q. But it was for some cause?

A. It was for some purpose other than Union activities.

Q. Now, Mr. Hawthorne, do you recall being in Pittsburgh on January the 23d, 1956?

A. I don't recall, but I could have been.

Q. Do you recall of going to a lawyer's office and giving a statement relating to Nick Stirone and any transactions you might have had with him?

A. I recall going to a lawyer's office. The conversation I don't remember.

Q. Were there more than one lawyer there, as you remember?

A. I remember there was two or three, I guess.

Q. And was it in the Grant Building, a building on Grant Street?

A. I believe it was, yes.

Q. Do you remember Mr. Gatz, the gentleman sitting here?

A. Yes, sir, he was.

Q. Do you remember discussing the matter?

A. Yes, sir.

Q. Was a statement taken from you at that time and then you signed it?

A. I don't remember, Mr. Casey.

(Paper marked Defendant's Exhibit "O").

Q. I show you what has been marked as Defendant's Exhibit "O", and ask you to look at the last page of that and see if you identify that as your signature.

A. Yes, it is.

Q. Would you read that statement to yourself?

A. (after short interval) I remember this fairly well.

Q. In that statement did you tell—

MR. TEITELBAUM: I wonder if I could look at the statement.

THE COURT: Let Mr. Teitelbaum look at it, will you, Mr. Casey?

(Exhibit "O" handed to Government counsel.)

Q. I ask you if what you say in there is not so.

A. Yes, it is fairly so. I don't remember too much about it, but—

Q. At that time you would have remembered more than you would now?

A. Sure.

MR. CASEY: I offer in evidence Defendant's Exhibit "O".

THE COURT: Do you have any objection, Mr. Teitelbaum?

MR. TEITELBAUM: No, sir.

THE COURT: The exhibit, Defendant's Exhibit "O", will be admitted.

MR. CASEY: That is all.

Redirect Examination

BY MR. TEITELBAUM:

Q. Mr. Hawthorne, how did you come to give that statement?

A. Well, I gave that statement on the day I come up to Pittsburgh and met Mr. Stirone. And I came—when I met Nick I met him—the fact is I had called Mr. Stirone, because we were still fairly friendly and I wanted to borrow some money back off of Nick. I was a little—borrowing of some money; I wanted to borrow some money.

Q. Did Nick give you some money?

A. Yes, he did.

Q. Do you remember—did you sign the statement about the time he gave you the money?

A. Yes.

Q. Do you remember that on December 5th you testified before a grand jury here, didn't you?

A. Yes.

Q. In your testimony before the grand jury did you say that you had given any money—that you had given money to Nicholas Stirone?

A. Yes.

Q. And in that statement did you say you didn't?

A. I don't remember saying I didn't, because I did give money to Nick Stirone.

Q. And on the day you signed that statement Nick loaned you some money. Is that right?

A. Yes, sir.

MR. TEITELBAUM: That is all.

BY MR. CASEY:

Q. That statement was taken in a lawyer's office, wasn't it?

A. Yes, sir.

MR. CASEY: That is all.

BY MR. TEITELBAUM:

Q. Was Mr. Casey there?

A. No, sir.

Q. Was it Mr. Casey's office, Margiotti & Casey?

A. It was an attorney's office, but I don't believe it was Mr. Casey's office.

Q. Thank you. That is all.

MR. CASEY: I ask leave to read in evidence the statement (Defendant's Exhibit "O").

STATEMENT OF ANDREW HAWTHORNE

> "Dated: January 23, 1956.
>
> "My name is Andrew Hawthorne. I reside at No. 32 South Street, Philadelphia, Pennsylvania. I am 39 years of age, married, and have three children."

Mr. Hawthorne, don't leave, until we see how old you are. Where is he?

MR. TEITELBAUM: I think he took off.

MR. CASEY (addressing someone at counsel table): Would you ask him to come back in?

(Continuing):

> "I am 39 years of age, married, and have three children.
>
> "I was Vice-president and Superintendent of Robert Hawthorne, Inc. until December of 1954.
>
> "Between approximately March 1, 1952 and about July, 1953 Robert Hawthorne, Inc. was engaged in two demolition jobs in Pittsburgh, Pa.: (1) demolition in connection with the Point Park project, and (2) demolition in connection with the Mellon Park project. The Point Park demolition clear once started about March 1, 1952 and was concluded about June, 1952.
>
> "I first met Mr. Nicholas Stirone approximately three to four months after

I came to Pittsburgh to act as Superintendent of the demolition job in the Point Park project. I was then superintendent for Robert Hawthorne, Inc., and I believed Mr. Stirone was the representative of the union supplying the laborers and it was common knowledge.

"We were already engaged in the demolition work and I contacted Mr. Stirone and asked him if possible would he be sure and secure for me men who were experienced in the demolition business, especially due to the fact that we were working up high, and if we had anybody which was inexperienced there might be an accident. In return Mr. Stirone said he would try to separate the laborers from the demolition men and would get me the best men possible, and that was the extent of the whole conversation.

"Mr. Stirone did not advise me that the men working on the job did not belong to the Local No. 1958 which he represented. My discussion with Mr. Stirone was very brief.

"Mr. Larry Huff, whom I imagined was business agent of the labor union which supplied the men to take care of the work involved, visited the job periodically and made sure the men were paid up in their dues, and that they were doing a satisfactory job for the contractor, us. My complete thought was, and my foreman's complete thought was, that he was the delegate designated by the union to check on the men.

"I believed and I thought that due to the fact that Mr. Huff was a representative of the union that he was under the local labor union which was headed by, or I thought was headed by, Mr. Stirone.

"After I first met Mr. Stirone, it was only a pleasure that if he was having lunch that I stop over and say hello to him or vice versa. That was the extent of any conversation with Mr. Stirone.

"Mr. Stirone never demanded any money from me. Mr. Stirone never demanded or even asked or suggested that I give him any money, and I doubt whether he would do it with anyone else regardless because he is too big a man to do that. I am not the type to hold for this nonsense. Mr. Stirone never made any threats that if I did not pay him he would not furnish us with qualified and experienced laborers or demolition men. Never any conversation whatsoever along those lines.

"Robert Hawthorne, Inc. and/or its representatives never gave anything as a gratuity to Mr. Stirone because they thought they were indebted to him. Rather they appreciated the service he gave them without money or gratuity.

"Recently, upon visiting my sister's house she informed me that there had been a publication in the newspaper stating that I had told someone or authorities that I gave Nick Stirone a sum of money. Immediately upon being informed about this I called T.W.A., boarded a plane at 11:15 and checked into the William Penn Hotel, and then made it my business to investigate this statement, and as of this time I have not completed the investigation but intend to.

"This statement is given voluntarily, without any threats or promises.

ANDREW HAWTHORNE

Witness:
Samuel Goldstein
Arthur D. Gatz, Jr."

Mr. Hawthorne, would you take the stand?

ANDREW HAWTHORNE, recalled, furthur testified as follows:

Cross Examination (Resumed)

BY MR. CASEY:

Q. Did you reside at No. 32 South Street, Philadelphia, Pennsylvania, at any time?

A. Yes, sir.

Q. And are you married?

A. Yes, sir.

Q. What is your age now?

A. Forty-one.

Q. And do you have any children?

A. Three.

Q. Did you--when you heard that someone said you had given money to Nick Stirone, did you take a TWA plane and come here?

A. When I heard that someone had stated—it wasn't that that I had heard, so much—someone had stated that Nick Stirone was shaking me down, or something to that effect, that is when I came up, yes.

Q. Nick Stirone never shook you down, did he?

A. No; no, Nick Stirone never shook me down.

MR. CASEY: That is all.

MR. TEITELBAUM: May we have a conference at side bar?

(At side bar)

MR. TEITELBAUM: Will the defense stipulate that Mr. Goldstein was at that time a member of Margiotti & Casey, or do I have to subpoena him?

MR. CASEY: I will call him.

MR. TEITELBAUM: Will you stipulate it right now, or do you want me to subpoena someone?

MR. CASEY: You can suit yourself.

THE COURT: Well, if you stipulate it, I will tell the jury it is stipulated. It is between you.

MR. CASEY: I won't stipulate. I am going to call him, at any rate. So I won't put it in that way.

MR. TEITELBAUM: I have no alternative. I will subpoena him then, if the defense won't stipulate to it.

MR. CASEY: I want him here myself. I would just as soon you get him as me.

MR. PALETTA: The Court can take judicial notice.

MR. CASEY: You don't intend to call him then?

MR. TEITELBAUM: Not if the judge is going to take judicial notice.

MR. CASEY: I am satisfied to have the judge take judicial notice of that. That is all right. As long as I don't stipulate.

THE COURT: Do you have any objection to my telling the jury?

MR. CASEY: No; you can take judicial notice.

(In open court)

THE COURT: Members of the jury, I just wish to state to you at this time the Court is taking judicial notice of the fact that the Mr. Goldstein referred to by Mr. Hawthorne, who just left the witness stand, was at the time the statement was taken from Mr. Hawthorne associated with the law firm of Margiotti & Casey, with offices in the Grant Building.

MR. TEITELBAUM: That is the man who witnessed this statement.

THE COURT: Yes, Mr. Goldstein is the man who witnessed the statement.

MR. CASEY: And the other man is Mr. Arthur Gatz, Jr.

THE COURT: Yes. Mr. Gatz was not associated with the law firm of Margiotti & Casey.

AUGUST C. DUVAL, a witness called by the government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Will you state your full name, please, Mr. Duval?

A. August C. Duval

BY THE COURT:

Q. D-u-v-a-l-l?

A. No; one "l".

BY MR. TEITELBAUM:

Q. Mr. Duval, where did you work in 1952?

A. In Pittsburgh.

Q. For whom?

A. For Robert Hawthorne, Incorporated.

Q. What was your job?

A. I was the general foreman for the whole works.

MR. CASEY: I would like to have an offer on this man.

MR. TEITELBAUM: I thought I made an offer before, but I will make another one.

THE COURT: Do you wish another offer, Mr. Casey?

MR. CASEY: I don't recall one, Your Honor, for this man.

(At side bar)

MR. TEITELBAUM: I intend to show by this witness that at the instruction of the prior witness, Mr. Hawthorne, he mailed a thousand dollars in cash to Nicholas Stirone at the Waldorf-Astoria Hotel, New York City.

MR. CASEY: I object to it, as showing an independent crime, in connection with the previous objections.

THE COURT: Objection overruled.

(In open court)

Q. I believe you said you were the general superintendent.

A. The same thing, foreman, superintendent.

Q. On what job?

A. Mellon Square.

Q. In the course of your duties, were you ever instructed to send anything, any letter and the contents thereof, to Nicholas Stirone?

A. No letters; but I was just instructed to take and mail a thousand dollars to Waldorf-Astoria Hotel, New York, to Mr. Nicholas Stirone.

Q. And in what form did you send it?

A. Ten $100 bills.

Q. And did you put it in an envelope?

A. I put it in an envelope, registered.

Q. Addressed to Mr. Nicholas Stirone?

A. Addressed to Mr. Nicholas Stirone, Waldorf-Astoria Hotel, New York.

MR. TEITELBAUM: Thank you very much, Mr. Duval.

Cross examine.

Cross Examination

BY MR. CASEY:

Q. When was that, sir?

A. The exact date I don't remember; sometime in September, 1952.

Q. Where did you get the ten $100 bills?

A. I cashed a check made out to Cash in the Mellon Bank, my signature on it.

Q. You mean your own check?

A. I was authorized to sign checks?

Q. For the Hawthorne people?

A. For the Hawthorne people.

Q. Where did you cash the check?

A. Over at the Mellon Bank, at Oliver and Smithfield, where we had our account.

Q. Who instructed you to do that?

A. Mr. Andrew Hawthorne.

Q. Do you know where that check is? Did it come back to you?

A. No, I do not.

Q. Did it come back to the company?

A. I guess it is back at the company.

Q. You don't have it, in any event?

A. No, I do not.

Q. You are sure you sent the money?

A. Sir?

Q. You are sure you sent the money?

A. I cashed the check. It was signed by me, and I went over and cashed it and got ten $100 bills, and mailed it in the post office, registered, insured—post office right on the first floor here.

Q. In this Federal Building?

A. Yes, sir.

Q. And you say that was sometime—

A. Sometime in September, 1952, I thought, but I do not know.

Q. Did Mr. Hawthorne tell you where to send that money?

A. He said to send it to Mr. Nicholas Stirone. What for I do not know.

Q. How long after you were told that did you send it?

A. Sent it right away.

Q. The same day?

A. The same day.

Q. Where was Mr. Hawthorne then?

A. Mr. Hawthorne was in Pittsburgh at the time.

Q. Where was it he told you to do this? On the job?

A. We had a little office there on the lot while we were tearing down the Gas Building. My office was right there on the first floor.

Q. That was the Mellon Square job?

A. On the Mellon Square job, yes.

Q. There was no letter, accompanying letter, or anything?

A. No letter or anything at all; just told me to mail—get the cash and mail it, and that's all.

Q. And that was registered mail?

A. Registered mail, receipt requested.

Q. What did you you do with the receipt?

A. I don't know where that is at.

Q. Did you ever have that?

A. It came back; naturally it came back.

Q. Did it come back while you were still in that office?

A. Yes, it came back while I was in that office.

Q. Was it delivered to you at that office?

A. Delivered to me at that office.

Q. At that time where were you living?

A. I was living at the Bigelow Apartments.

Q. You are sure it didn't come back to the Bigelow Apartments?

A. I had my wife there with me; the company paid my expenses.

Q. You don't' know whether you put the return address for The Bigelow or what?

A. No, it didn't come to The Bigelow. It come to Robert Hawthorne, Incorporated, right where we had our little office.

Q. Is that on Smithfield Street?

A. Oliver and Smithfield there, where the whole square job was.

Q. You got mail delivered there, did you?

A. That is where we had our company mail delivered.

Q. That is all, sir.

ALBERT L. RUSSELL, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. What is your name, sir?

A. Albert L. Russell.

Q. And where do you live, Mr. Russell?

A. I live at 929 Slagle Street, Johnstown, Pennsylvania.

MR. CASEY: 929 what?

MR. TEITELBAUM: Slagle Street.

MR. CASEY: May I have an offer at side bar?

MR. TEITELBAUM: Yes, sir.

(At side bar)

MR. TEITELBAUM: I intend to ask this witness, after I identify him, whether he received any instructions from Nicholas Stirone as to methods to be used in inducing them to join the union; and if so, what that was. That is all.

MR. CASEY: Objected to, as tending to show an independent crime.

THE COURT: Objection sustained.

MR. TEITELBAUM: Let me give my offer, while we are here, on Ross Adams. I intend to call Ross Adams for exactly the same purpose.

MR. CASEY: I object to that.

THE COURT: The objection will be sustained.

MR. TEITELBAUM: I want to point out in this regard that Mr. Stirone testified as to his method of unionizing on direct testimony; that on cross examination I asked him a question as to whether he had ever used any men to go out and drive people off the track. Now, I am not contesting it. I am merely saying I offer to prove it, to show that I had such evidence at the time I asked the question.

THE COURT: You still object?

MR. CASEY: Yes.

THE COURT: The objection will be sustained.

MR. TEITELBAUM: I just want to establish that I didn't go on a wild chase.

THE COURT: That is all right.
(In open court)

THE COURT: I think perhaps we better give the jury a recess at this time.
(Short recess taken at this time.)

MAX CLARK HARRISON, a witness called by the Government in rebuttal, having been duly sworn, testified as follows:

Direct Examination

BY MR. TEITELBAUM:

Q. Will you state your name, sir?
A. Max Harrison.
Q. And your business?
A. Harrison Construction Company; I am president.
Q. And how long has the Harrison Construction Company been in business?
A. March 22, 1928.

MR. CASEY: I ask for an offer on this, please.

MR. TEITELBAUM: As soon as I identify him.

Q. How long have you been the president?
A. Since 1947 or 48, something like that.
Q. How long have you been an officer of the company?
A. Since 1929.
(At side bar)

MR. TEITELBAUM: The Court will recall on the examination—cross examination of Mr. Stirone I asked Mr. Stirone whether or not he ever paid Max Harrison any money to represent him in a labor dispute. His testimony was—and I limited it to cases where it did not involve his own employees—

THE COURT: That is, members of Local 1058?

MR. TEITELBAUM: Local 1058—and he said no, not that he could remember.

MR. CASEY: As I remember, the testimony was that you asked him whether he had ever given any contractor.

MR. TEITELBAUM: No; I asked him specifically. Mr. Casey, I want to point out something. I recognize that I raised that on cross examination, as to a collateral matter. I recognize that Stirone said "Not that I could remember." Therefore, if you object to this testimony, I will freely agree it is not admissible. But I feel I must put this man on record and offer his testimony, to show that I had a basis when I asked the question. Now, if Mr. Casey objects, I agree——

MR. CASEY: Well, I object.

THE COURT: I sustain the objection.
(In open court)

MR. TEITELBAUM: You may step down, Mr. Harrison.
May it please the Court, the Government rests in rebuttal.

GOVERNMENT RESTS IN REBUTTAL

THE COURT: All right, Mr. Casey.

MR. CASEY: If the Court please, may I again see the Court at side bar?
(At side bar)

MR. CASEY: If the Court please, at this time I move the Court that the court stand in recess in this case for a period of time sufficient to investigate the matters relating to August C. Duval, Bernie Smith, Robert Hawthorne and George Doherty. In order to so do, I will have to locate the various people named, the Bunchers, and the other matters, look up records, check hotel registrations, in order to prepare a defense to each separate charge and distinct crime alleged. I will be willing to try immediately, this evening, to try to locate as many of the witnesses as I can, such as Buncher. I have no knowledge of—and I came here pursuant to a letter from the United States Attorney's Office we were to try the case of United States vs. Nick Stirone, involving the Rider transaction.

MR. TEITELBAUM: May it please the Court, Mr. Casey's office has had full knowledge of the details of the Doherty matter and the Hawthorne matter since at least January of 1956, because they represent Mr. Stirone in those matters. They had a bill of particulars in both of those matters, in which they knew specifically what was involved. Obviously they made preparation, because they read here a statement which they took of Mr. Hawthorne after his testimony before the grand jury.

MR. CASEY: We don't deny we made some preparation.

MR. TEITELBAUM: Let me say another thing. This case is now at the end of its second week. Before we started, the first day, I advised Mr. Casey in the Court's presence that I intended to call Mr. Doherty and I intended to call Mr. Hawthorne. So that he has been on notice ever since that time. He knew that I called them once to the stand and offered them; he objected. Now, at that time I intended to reoffer them in rebuttal.

MR. CASEY: I never knew that.

MR. TEITELBAUM: I said it.

MR. CASEY: I never heard it.

MR. TEITELBAUM: We have been discussing them now for two weeks, we have been arguing about this matter. The only thing he didn't know was how you were going to rule. And I think a lawyer trying a case over two weeks has to be prepared to try his case—

MR. CASEY: I am prepared.

MR. TEITELBAUM: —and not ask for a recess.

MR. CASEY: If the Court please, this case was the late Charles J. Margiotti's. I never heard of it, had nothing to do with it in the course of preparation of it until I was retained since the formation of a new law firm which now bears the name of Margiotti and Casey It isn't the orignial firm of Margiotti and Casey, which was dissolved by the death of Charles J. Margiotti on August 25, 1956. That since that time I have been continuously engaged in the trial of this case, intending to meet the indictment upon which we are on trial here, and I have had no opportunity to study except cursorily.

I asked, in view of the matter this morning —the first time I ever saw the statement of Hawthorne was over the lunch period, when I went to my offiices, after I had learned his name from Mr. Teitelbaum before the noom recess of the court. That is why I asked him his name again, to make sure what it was. I feel I cannot do justice to my client. I can't put the client upon the stand until I have had an opportunity to go over the matter, the testimony here, my notes of testimony or the transcribed record, and during that course of time to prepare a defense to each of the individual matters involved. I think—

MR. PALETTA: May I say something?

THE COURT: I want to get the motion on the record.

MR. CASEY: I think, in the interests of justice, I should not be compelled—now, I recognize our problem here, and I am perfectly willing to work day and night in order to get prepared to present my evidence, whatever it might be.

MR. PALETTA: This very question came up in the Rayhall trial, I think before Judge Marsh. Now, legally, on the rules of evidence, these are rebuttal witnesses we put on the stand. He wants time in order to secure evidence to impeach the credibility of rebuttal witnesses. According to law, the evidence—and I am going to look it up as soon as I leave here—he has only one way to impeach credibility, and that is by cross examination, because if you allow rebuttal witnesses to rebuttal witnesses you have a trial within a trial—

MR. CASEY: That is what it is.

MR. PALETTA: —and it can go on ad-infinitum.

THE COURT: He is entitled to offer sur rebuttal..

MR. PALETTA: Sur rebuttal to the case in chief, but not sur rebuttal to rebuttal; sur rebuttal to the case in chief

THE COURT: Off the record.

(Informal discussion, off the record.)

THE COURT: For the purpose of the record, I will not grant any continuance except until Monday morning, over the week end. That is my ruling on Mr. Casey's motion.

(In open court)

THE COURT: Members of the jury, the defendant's witnesses whom they wish to call at this time are not now available. So I think now that, rather than try to do anything tomorrow, it is best we adjourn until Monday morning. And we will start at 9:30 Monday morning, and also run into Monday evening, so we can finish the case on Monday.

We will adjourn until 9:30 Monday morning.

(whereupon, at 3:45 P.M. on Friday, June 14, 1957, the trial was adjourned to Monday, June 17, 1957, at 9:30 A.M.)

(At side bar)

MR. CASEY: I move that the testimony of William G. Rider be stricken from the record as being at variance between the indictment and the bill of particulars, and it having no probative value and not charging nor helping to prove any crime as set forth in the indictment or the bill of particulars.

THE COURT: Motion is denied.

MR. CASEY: I move the Court to recess this case for sufficient length of time to permit the defendant with accountants or investigators to examine the books of account of the Buncher Brothers Company to ascertain all the invoices, checks and remittances relating to any scrap metal, whether ferrous or non-ferrous from the Carnegie Building from Doherty to the Bunchers.

MR. TEITELBAUM: If it please the Court, I think the record should show, the Government did not have to do this, on the first day of this trial in your chambers we advised Mr. Casey of our intention to call Mr. Doherty to the stand and testify as to other similar acts.

MR. RICH: That is not so.

MR. TEITELBAUM: He has been prepared at least since that time. Mr. Doherty has been in court every day and standing around here. Mr. Stirone well knew him.

Furthermore, there have been at least two years while this case was going through various arguments and discussions that although Mr. Casey was not presently in the matter, Mr. Rich was there, associate counsel Mr. Gatz was there. They have had more than ample time to be prepared and I think it unreasonable to request a postponement.

THE COURT: What would you gain by that anyway? What would you get from those records other than what Mr. Al Buncher and Mr. Jack Buncher have already testified?

MR. CASEY: I can trace all the materials through their books and show just exactly how much scrap metal there was and how much non-ferrous metal there was.

THE COURT: He already testified according to the records they were paid.

MR. CASEY: They were asked, by the Government, whether or not all their records would show all that.

THE COURT: If the situation is such as described by Mr. Doherty, their records wouldn't disclose anything in any event.

MR. CASEY: If it is not, it might disclose that sufficient metal passed through their books to be all of it or substantially part of all the metal in the building.

MR. TEITELBAUM: I assure Mr. Casey that Mr. Buncher and Mr. Casey and Mr. Stirone and Mr. Casey's law firm had known that the charge essentially was the same all the way back two years ago, that the metals, the non-ferrous metals were not paid for. I can assure him if Mr. Buncher had statements in his records showing he had paid for those non-ferrous metals, Mr. Casey would have been well able to present them.

MR. CASEY: No, that's one reason I am asking for a recess is because I have not had an opportunity. I haven't had a chance to do it. I was surprised by the testimony last Friday and over the week end I was barely able - I used all day Saturday in talking to Mr. Buncher and other witnesses, that I was called upon to meet in view of testimony of Mr. Hawthorne. At no time did I know Mr. Doherty, ever recall seeing him here, except when he was produced upon the stand and then the offer was objected to and sustained by Your Honor.

I was informed by a letter signed by Mr. Teitelbaum or someone from his office, I think to Mr. Levinson and to myself, stating the only case that would be called upon to be tried at this time would be the case involving the William G. Rider case.

Further than that, I was led to believe when Judge Sorg had refused to consolidate the cases upon the objection of the defendant that I wouldn't be called upon to meet that matter. The way the record stands now, I could not adequately prepare a defense relating to the charges of Doherty made upon the stand in rebuttal.

THE COURT: I have considered that since you first raised the question last Friday, Mr. Casey, and I have attempted to give you every opportunity to call witnesses whom you needed. I have adjourned two, maybe three occasions before the regular adjournment hour so that your witnesses would be available the next morning, and in thinking this matter through, I can not see wherein your client is injured in any way whatsoever by not having the records of the Buncher Company here.

MR. CASEY: If the Court please, that didn't develop until today really is the only time about the records that came about.

THE COURT: You made a request on Friday for a recess to examine records or something.

MR. CASEY: To prepare a defense and to interview all these witnesses. Today is the first time in answer to Government's question is when Mr. Buncher said that all of those matters would be in the hands of their bookkeeping people and would be available over there and that the records that I had in court here I think one of them was Exhibit T, although I wouldn't say, being a pack of checks and the remittance advices. They were not all of the records, but just taken at random from the file and that the complete records would show all of the matters that came in and went through the books of the Buncher Company.

MR. TEITELBAUM: Mr. Buncher indicated it would take at least three days to get any such records and I never heard of adjourning a criminal case for a period of three days while we have a jury sitting in the box.

THE COURT: The motion is denied.

MR. CASEY: I move the Court to strike out the testimony of the witness George T. Doherty and Andrew Hawthorne as being not proper rebuttal.

THE COURT: The motion is denied.

MR. CASEY: I am ready to rest. So I don't forget, I would like at this time to renew my motion for judgment of acquittal, so I am sure it is upon the record. I would hate not to have that on.

THE COURT: That is the same motion you made at the close of the Government's case.

MR. CASEY: I'd like an opportunity in the morning if we could—it's getting to nine o'clock now—to say a few words either in chambers—

THE COURT: I will give you an opportunity to say a few words tomorrow morning and I will rule on it tomorrow morning.

MR. CASEY: Let the record show that the defendant rests.

* * * * * * * *

AFTERNOON SESSION 2:00 p.m.

THE COURT: Mr. Teitelbaum?

MR. TEITELBAUM: If it please the Court, ladies and gentlemen of the jury, until I heard Mr. Casey's closing, I never realized that Mr. Paletta and myself were such bad fellows. He said or inferred we want a victim, he inferred maybe we are publicity seekers. He inferred maybe that we have got some personal motive against Mr. Stirone or that we want to satisfy our personal egos.

Now, you have seen us here. You have seen us here for two weeks. I assure you Mr. Paletta and myself and Mr. Stiles of the F.B.I., Mr. Torrance of the F.B.I., the men who worked on behalf of this case have only one sworn duty. Our duty is to prosecute the guilty, those who are guilty of violating the federal law.

It's no part of my sworn duty or Mr. Paletta's or anybody else's to convict any innocent person or to try them. If any person would be innocent, we would be here asking you to acquit, not trying to convict them. In fact, if we felt anybody were innocent, we wouldn't have them here. That is our duty, we have no other.

* * * * * * * *

Think of something - Mr. and Mrs. Rider, and I want to say something about them being here this morning and Mr. Doherty being here today, they are under subpoena to the United States Government. They have to be here until I tell them that they are now excused. As we ended up last night, somewhere around nine o'clock, Mr. Casey had just rested his case. Whether I was going to call further witnesses was not yet determined and I had until this morning to decide whether I wanted to ask Judge Miller to let me bring another one. So I didn't excuse them because I wasn't sure.

Naturally they are interested in hearing what goes on. The man lost, the man was extorted to over $30,000. Doherty was extorted to a greater amount than that. Certainly they want to hear what's going to be said. Certainly they are interested in what I am going to say and what Mr. Casey is going to say. Certainly they wanted to hear what Mr. Casey is going to say about them, but in the outcome of this case, neither of them have any interest. Remember Mr. Bergman's testimony. You know, the tailor there, the tailor that was on the stand. Mr. Bergman says that Mr. Rider said, "I have nothing against Stirone." What does that indicate? He had no hatred for Stirone. Certainly nobody likes to be extorted but what did he say and who brought it out? The defendant says he had nothing against Stirone. He had to do it or he was forced to do it.

Now, that's an indication that he wasn't bringing this about for revenge or for any other motive that Mr. Casey might have been able to think up. He was testifying under subpoena at the request of the Government to the truth and I assure you that it would have been simpler for Mr. and Mrs. Rider and for Mr. Doherty to have taken their loss and called it quits and never have said a word and never have been on the stand and never have had their lives dragged out in public as happened in this case. Their own interest lay the other way.

They were testifying because the Government subpoenaed them in the enforcement of the federal law. They were telling the truth, they were telling it as it happened and they have no interest or no motive to do it. If they have any interest, certainly that interest would be in letting the thing pass, bury it dead, and forgetting about it.

* * * * * * * *

That's how he came in here. He had the thirty-three districts, he was the spokesman. You remember Mr. Tejan said, "Well, at the meetings Mr. Stirone was the spokesman for the Hod Carriers." He was also the head of this Heavy Engineering Council which included teamsters, carpenters, hod carriers and heavy engineers. He was the president of that. There's no question that he was Mr. Big in labor in Western Pennsylvania, but you know, I wouldn't have had to bring all those witnesses to show you how big Mr. Stirone is in labor. You saw how how big he was. Wasn't it disgraceful that all those big constructors, all these big contractors paraded into this court one after the other? I don't know how many of them there were, maybe 20, 25 of them, to stand on that stand, to stand up there and testify Nick Stirone has a tremendous, wonderful reputation for truthfulness, for honesty, for being law-abiding.

I asked them about various rumors and whether they'd ever heard of them before. Some of them said they never heard of anything. Of course, this case broke two years ago and it was all over the papers. None of them ever heard anything bad about Nick Stirone.

Do you remember the testimony? Do you remember that Nick Stirone has been a fast buck artist all his life? Do you remember that he had shovels? He said Mrs. Stirone owned the shovels, but he was there when they negotiated the contract. They rented that shovel to Perini for $2,000 a month. I asked him if the shovel cost more than $20,000. He said he couldn't remember how much the shovel cost. I asked him if the contract was for two years. He couldn't remember how long the contract was for. He was in a venture with the big venture man from New York, the emergency witness Labowitz. Labowitz himself, the big scrap dealer that deals in whole plants and doesn't even own a scrap yard, that was Stirone's partner. He was in deals with Labowitz. He was renting equipment, he went out and got a contract. He went out and rented some equipment from a man named Beintend, who told you on the stand that Nick got a commission. He said himself he dealt with a ward chairman by the name of Spankard to try to get a parking lot concession. He's been in everything.

He says, "I know my way around town," and yet all those contractors got up on the stand and testified as to his character. Do I have to tell you how big Mr. Stirone is in labor or could you see it from all the facts that those people paraded up here, one after another, to testify? Don't you begin to wonder?

* * * * * * * *

That shows you that Mr. Dierker was willing to testify to anything that Czar Nicholas Stirone wanted him to testify to. He'd testify to anything. He'd come right back up there on the stand, a man in his position and say, "Oh yes, I have refreshed my memory. As I recollect now it was the William Penn." It shows that the whole thing is a fabrication.

* * * * * * * *

So that little inquiry by Mr. Casey gave him the right to make all those long accusations that Mr. Rider was out of town every week end, that Mr. Rider didn't take care of his business, he called him a playboy. He got into gambling activities. Now, what difference does that possibly make? If Mr. Rider was a bad businessman, he didn't have any right to extort money from him. If Mr. Rider was a playboy, and I say there is no evidence he is, you don't have any right to extort money. Whatever else might have gone wrong in Mr. Rider's business dealings, you have no right to extort money and that is the issue. And who is throwing smoke? Who is trying to make this into a trial of Rider? The defense is trying to. They tried to make it a trial of me. In one case they didn't even like the demeanor of the judge on the bench. They have attacked everybody.

MR. CASEY: Now if the Court please, I think there ought to be argument upon the facts. I have sat here and heard "Czar" and inflamatory remarks. I repudiate my agreement if I have to do this.

MR. TEITELBAUM: I thought that would happen.

THE COURT: Now—

MR. CASEY: I'd like to ask anybody else if you thought it would happen. You are doing too much thinking now.

THE COURT: Now—

MR. CASEY: Besides that, I want to call the Court's attention to the $760,000, that it was the value of the contract.

MR. TEITELBAUM: This is awful, Your Honor.

THE COURT: Mr. Casey, it's up to the jury to evaluate the facts. If there is any misquoting of the facts by either counsel, it's not your recollection, it's not Mr. Teitelbaum's recollection, but it's the recollection of the members of the jury as to what the facts are.

MR. TEITELBAUM: You will recall that's exactly what I told you when I started out. Please take your own recollection, if I said anything contrary to what you remember. It makes it difficult to argue, of course when you are interrupted.

MR. CASEY: Well, I apologize for interrupting. I held myself as long as I could and listened to unjust accusations.

MR. TEITELBAUM: If it please the Court, I think that the marshal ought to be called.

THE COURT: Mr. Casey, that's enough.

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Now, in addition to the fact that Mr. Stirone and Mr. Dierker have given you inconsistent, unbelievable and downright false testimony which you are entitled to consider, I think you ought to also consider the logic of the defense contentions.

As I said to you, the function of a jury is to use your experiences in every-day life. Who is the defendant? The defendant is an extremely powerful labor leader. He is Mr. Big in labor in Western Pennsylvania. By his own testimony he is a greedy, avaricious man, always out looking to see if he could make a fast buck. He is renting equipment, he is doing everything else in addition to being a labor leader, and Mr. Moreschi says, my recollection is that Mr. Moreschi says that labor leaders are only supposed to work in the job of being a labor leader.

Are they supposed to go out and rent trucks to contractors who are using their labor? Are they supposed - not trucks, equipment. Are they supposed to rent equipment to people who are using their labor and with whom they must negotiate? Are their laborers getting a square deal if they are renting to people with whom they negotiate equipment at a good price? Think of that. Is that the act of this honest labor leader whose word is his bond? There's the picture of him. He's making all kinds of deals. You heard his deal with Joe Labowitz, the New York venture man. He didn't bother to ask Rider how much Rider was going to make. And think of Ruston Company. Isn't that an unusual picture, a man has a company set up to record his legitimate transactions? Now, that's what he told us. He didn't know what else it did. He says, anything. "You ask it and I'll tell you whether they do it or not." Is that the answer to a question? He says he didn't know what they did, but if I'd ask him, if I'd itemize some things, he'd tell me whether they did them. So I started to itemize some, I itemized rental of equipment. He says, "Oh yes, they did that." Then he corrected himself, he says, "No, it was his wife's equipment." Then I asked him something about it wasn't in Ruston Company and he says, "Well, everything my wife owns, I own, because I am married, and everything is all together." Then I asked him who got the rent. He says, well, there was some assignee. Well, what is an assignee? That's when you put something in somebody else's name. I asked him who. He says he doesn't know. He doesn't know who got the $2,000 a month for that truck that his wife owned. Unbelievable.

Consider the logic. Never before had Stirone gotten a commission for getting a contract. But in at least two instances that you know of he had gotten shakedowns on other occasions. It was his pattern. He used fear, he used fear of labor trouble to get money from people who were in the contracting business. He used fear and he used fear with Rider. He not only used fear of labor trouble, but he used fear with Rider of his tremendous and important position.

Consider in considering the testimony of Dierker and the Bunchers that lots of contractors have shown that they are quite willing to do Nick Stirone a favor by testifying. Now, Dierker and the Bunchers - Dierker, of course, is in the thing up to his ears and so are the Bunchers. So what else would you have expected the Bunchers to say? Do you remember something about the Bunchers? Buncher sat on the stand and Mr. Paletta asked him how much scrap was in the building. He says, I don't know. "Well, was there a hundred thousand dollars worth of scrap in the building," or first, two hundred. He says, "I don't know whether it's two hundred.". "Well, is it one hundred thousand dollars in the building?" "Yes, there was a hundred." "Was there a hundred fifty?" "Well, I don't know." Then what comes out is that Bunchers themselves had bid over $200,000 for the scrap in the building. Now, certainly they were not being truthful with you.

Then something else. Buncher let something slip that I am sure he didn't mean. He says he had a list of all the bids by all the people who bid on the building. How did he get that and why did he have that? What business did he have with that? Who is Buncher? Buncher tried to bid in the building himself. Doherty hadn't figured in, and it is obvious and implicit in the case he hadn't figured in in his bid any $35,000 take for Nick Stirone, and he hadn't figured in the price ticket, so he was the low bidder. He got the job, because he hadn't figured in Nick's fix. That upset Bunchers. —And that upset the Bunchers who had also been trying to bid on the contract. Doherty then got the contract. Doherty is a man who is skilled in the wrecking business, a man who is in the wrecking business, a man who is in the wrecking business now. He testified that as to what happened. His story would make no sense if it weren't true. It would make no sense for a man to have picked Nick Stirone if he didn't even know him. With anybody he could have picked, why pick Nick if he didn't know him? If he had only met Nick for two minutes five years ago, why would he pick out Nick? What reason has ever been given to explain a thing like that?

And I say something else to you. The story was that Mr. Doherty told you the metals, the brass and lead and other non-ferrous metals were given to Buncher. Now, two years ago, two years ago, Mr. Buncher told you that Ed Stiles of the F.B.I. went out to see him about this proposition. At that time he knew that he was charged with that matter. He knew what was involved. Yet he appeared and I say something else to you, that Doherty has been sitting around this courtroom since this case opened under our subpoena and Nicholas Stirone knows him and saw him sitting around there and yet on Friday when Buncher comes into court, he says, "I only have part of my records. I haven't had time to get all of them. It would have taken me three days." He's had two years. If he had records of the payment to Doherty for the non-ferrous metals, if he had paid Doherty for them and had records of it, I assure you that he would have had them.

MR. CASEY: If the Court please, I have a motion on this record for a recess of this trial with reference to that.

MR. TEITELBAUM: Oh, my I thought we had agreed.

MR. CASEY: As the record stands.

THE COURT: Mr. Casey—

MR. CASEY: Well, I can't stand—

THE COURT: Just a minute. There's no question about your motion.

MR. CASEY: He is arguing it right to this jury right now and I want it put upon this record.

THE COURT: Well, you have—

MR. CASEY: I move this Court for a recess in order to bring that evidence in here or this man is up in front of this jury accusing me of not being able to do it.

MR. TEITELBAUM: Mr. Casey, your word isn't very good.

MR. CASEY: My word is loud.

MR. TEITELBAUM: It's lousy.

THE COURT: All right, sit down now. Go ahead with your speech.

MR. CASEY: I want it upon the record that I—

THE COURT: It's on the record.

MR. TEITELBAUM: Ladies and gentlemen of the jury, if you remember, during the course of Mr. Casey's talk I on no occasion interrupted whatever he had to say. I said afterward to the Court the objections, whatever I had to object to. I did not interrupt.

MR. CASEY: I want the jury to know that I did that in good faith until I hear this sort of business going on. I contained myself as long as I could.

MR. TEITELBAUM: If the Court please, do I have to be subjected to this?—

THE COURT: Proceed now. Mr. Casey—

MR. CASEY: I have to do something about it.

THE COURT: Mr. Casey, you are not to interrupt him again. If there are any objections you have, make them after he gets through.

MR. TEITELBAUM: When the pressure gets tough, some people lose their manners, I guess.

* * * * * * * *

June 19, 1957
9:30 a.m.
Morning Session

(At Side Bar)

MR. CASEY: Counsel for defendant objects to the inflammatory remarks of the United States Attorney in the trial of this case in connection with the statements as to "labor boss", "Czar", "Czar Nicholas," and the remarks concerning the coercion or intimidation of the character witnesses who were employers of members of the local union.

Further, I'd like to place upon the record, the defendant alleges that said remarks were injurious and prejudicial to defendant's case and place upon the record objection to the action of the Court in permitting counsel for the Government to examine, both over the objection of the counsel, the minutes of District Council and Local 1058 which had only been identified in the trial and ordered in the possession of the United States clerk.

MR. TEITELBAUM: Counsel for the Government likewise objects to the inflammatory remarks concerning Mr. Rider, the reference to him as "Playboy Rider," the reference to various trips which there is no evidence to substantiate. We have also no request.

MR. CASEY: I don't either, no requests.

IX

CHARGE OF THE COURT

Members of the jury, you have now heard all of the testimony in the case and the arguments of counsel and it is now time for you to perform your function in the case, which is to determine upon a just verdict between the defendant, Nicholas A. Stirone and the United States. In rendering a true verdict as your oath binds you to do, you are performing a function of ancient origin. In ancient times, as well as in modern times, a trial by jury is one of the hallmarks of justice and liberty. The Court has confidence that you, in this case, will perform your duty conscientiously.

Members of the jury, under the Constitution of the United States, the Congress has been given power to regulate commerce between the various states. In the exercise of its Constitutional powers, Congress has enacted a statute which is intended to protect the channels of interstate commerce from extortion.

It is alleged by the Government that the defendant has violated that statute and has committed an offense against the United States.

In cases such as this, the Court and jury have different functions to perform. The Court is required to rule upon questions of law during the trial of the case and to instruct the jury as to the law applicable to any issue which you are to determine. You are required to take the law from me as I give it to you in these instructions. You, the members of the jury, when the case is submitted to you become the judges of the facts. You alone determine what the facts are, what witnesses are to be believed and what is true. You are the sole and exclusive judges of the facts and of the credibility of the witnesses and you should not permit any invasion of your province to alone judge the facts.

For that reason, I am not going into the facts with you in detail and I do not intend to summarize the testimony of any witness in the case. If I should do that, it would unduly extend the length of this charge and would only add to the heavy burden which rests upon you to find the facts from the evidence. If I should review the testimony, I might emphasize parts of it and omit others which are equally important.

Therefore when I refer to the testimony in this charge, it will be only for the purpose of pointing up the issues you have for decision and to explain the principles of law which may be involved, depending upon how you find the facts. You should not depend upon any impression you may have as to the Court's view or the view of the lawyers as to what the facts are. Your judgment of the facts should be your own uninfluenced judgment, uninfluenced by the Court, except as you are bound to follow the law as given to you. Statements made by counsel as to their recollection or what was said or written are not binding on you. However, the arguments of counsel are entitled to your respectful consideration and their arguments should be of considerable help to you in marshalling the facts in your mind, but you alone must judge the facts.

You must not attach any significance whatsoever to the fact that at times the Court in making rulings on the evidence sustained the objections either of the defendant's counsel or of the Government's counsel. These rulings involve legal questions only and you must not be concerned with the reasons for the rulings or why the Court ruled in a particular manner.

The Court has no impression as to the innocence or guilt of the defendant. The Court has high regard for both counsel for the defendant and counsel for the Government and you must not infer from any ruling or remark of the Court that the Court displayed favor for one party or the other.

The Act of Congress under which the indictment has been returned and with which we are concerned in this proceeding provides as follows, as it relates to this case: "Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce by extortion shall be guilty of an offense against the United States." The statute then goes on to define extortion as the "obtaining of property from another with his consent induced by fear."

Ladies and gentlemen, I am not going to read the entire indictment to you because you will have it with you in the jury room to aid you in passing upon each of the allegations contained therein in an orderly manner. In the indictment it is alleged in Paragraphs 4, 5 and 6 as follows: "Fourth, that commencing on or about the first day of March, 1951, the exact date being to the Grand Jurors unknown and continuing thereafter up to and on or about December 31, 1953, in the Western District of Pennsylvania and within the jurisdiction of this Court, Nicholas A. Stirone did knowingly, willfully and unlawfully obstruct, delay and affect interstate commerce between the several states of the United States and the movement of the aforesaid materials and supplies in such commerce by extortion, to wit, by obtaining property to the value of $31,274.13 in the form of money from William G. Rider induced by fear and by the wrongful use of threats of labor disputes and threats of the loss of, and obstruction and prevention of, performance of his contract to supply ready-mixed concrete."

Paragraph 5 provides, "Defendant Nicholas A. Stirone threatened and caused William G. Rider to fear that preparation and delivery of the mixed concrete would be delayed or altogether prevented and that as a result said William G. Rider would suffer financial loss if the defendant did not obtain the property as stated in Paragraph 4."

Paragraph 6: "Defendant Nicholas A. Stirone threatened the said William G. Rider that defendant would, in his capacity as a labor representative wrongfully and corruptly embark upon a course of oppressive action against said William G. Rider by preventing movement of supplies and materials and ready-mixed concrete."

Therefore in this case, you have two decisions to make. First, did the alleged conduct of the defendant in any way or degree obstruct, delay or affect interstate commerce or the movement of any article or commodity in interstate commerce?

Second, did the defendant obtain property from Mr. Rider with his consent which was induced by fear, as I shall explain that term to you?

I have told you that you alone are to judge the innocence or guilt of the defendant. Therefore, the indictment is not evidence and can not be considered by you as any evidence of the guilt of the defendant. The indictment is merely a formal written accusation in which is set forth the name of the defendant and the essential elements of the crime which the Grand Jury alleges he committed. You must not indulge any presumption of guilt from the fact that the defendant has been indicted by a Grand Jury.

We inherited the Grand Jury system from the English common law and it is a fundamental part of our system of justice but it means bringing an accused to trial only upon probable cause and upon an ex parte hearing. The indictment constitutes no evidence whatsoever of the guilt of the accused person. You as the trial jury determine whether in fact the defendant is innocent or guilty under the standards which I am now giving to you.

You should enter upon your deliberations on the evidence in this case with a presumption that the defendant is not guilty of the offenses charged against him, it being incumbent upon the Government before you would be privileged properly to convict the defendant to establish his guilt by evidence beyond a reasonable doubt and to a moral certainty upon every material, essential element necessary to constitute guilt of the offense charged.

By "reasonable doubt" is not meant all possible doubt. Very little in this world can be proved by human testimony beyond all doubt and the law does not require such a high standard. Nor is a reasonable doubt a fanciful doubt to be used by a juror to avoid an unpleasant duty, but "reasonable doubt" means that the mind of the juror is left in doubt after an honest consideration of all the evidence in the case and does not rest easily upon the certainty of the guilt of the accused.

In order to convict a defendant in a criminal case it is necessary that the collective minds of the twelve jurors should rest easily upon the certainty of the guilt of the accused of the offense charged, after the jury has given the entire evidence careful, fair and just consideration. If any reasonable doubt then exists as to the guilt of any accused person in the mind of a single juror, it would be the duty of that juror to stand firmly for his acquittal. Absolute certainty of the guilt of an accused person is not demanded by the law in order to convict a person of a criminal offense, but moral certainty is required and such moral certainty is demanded as to every proposition proved requisite to constitute the offense charged.

I shall also define a reasonable doubt to you as a doubt arising from the evidence or from a lack of evidence after consideration of all the evidence. It is not a vague, speculative, imaginary something, but such a doubt as would cause a reasonable person to hesitate to act upon it in matters of importance to himself or herself.

To put it another way, you can not find the defendant guilty unless you are so convinced by the evidence that you would venture to act on that conviction in matters of importance to your own interests.

The defendant has entered a plea of not guilty to the charges in the indictment, thus denying the material allegations contained therein. As you consider the evidence, it is important to bear in mind that the law presumes the defendant to be not guilty of the offense with which he stands charged. This presumption of innocence remains with the defendant throughout the trial, through all of its stages and should cause the jury to find him not guilty unless removed by evidence presented to you by the prosecution which establishes his guilt beyond a reasonable doubt of the charges contained in the indictment.

The presumption of innocence alone is enough to work the acquittal of the defendant unless you are convinced from all of the evidence in the case of the defendant's guilt beyond a reasonable doubt. The burden of proving the guilt of the defendant beyond a reasonable doubt never shifts. It continues from the beginning to the end of the case and applies to every element, fact and conclusion which the prosecution must establish in order to obtain a conviction. This is so even though I do not repeat the phrase every time I discuss those facts or elements necessary to establish his guilt or innocence. Therefore the burden rests upon the Government to prove beyond a reasonable doubt, first, that the defendant Nicholas A. Stirone, extorted money from William G. Rider as alleged in the indictment and second, that the conduct of the defendant obstructed, delayed or affected interstate commerce or the movement of articles in interstate commerce. Each of those is an essential element of the crime charged.

Since it is your exclusive function to decide what the facts are, it will be for you to determine the facts relating to the interstate commerce aspect of this case. It is only if there has been one of these effects on interstate commerce that an offense against the laws of the United States has been committed, because interstate commerce is the basis of the federal jurisdiction in this case.

At the opening of the case, the Government introduced evidence relating to the dredging and shipment of sand which it contends was used in the manufacture of the cement which Mr. Rider used in performing the Ragnar-Benson contract which has been the subject of much testimony in this case.

It is the Government's contention that all or substantially all of the sand so used has been shipped in interstate commerce. It is also the position of the Government that concrete supplied by Mr. Rider containing the sand shipped in interstate commerce was being used in the construction of a plant which, when in operation, would produce articles of steel to be shipped in interstate commerce.

Consider the evidence of the Government on this question in the light of any other circumstances or other evidence bearing on the interstate nature of the shipment of sand or the sand used in making concrete supplied by Mr. Rider and on the use to which the mill under construction would be and was put. Then if you are satisfied beyond a reasonable doubt that the sand had been shipped from another state into Pennsylvania by any means of transportation and was used in making concrete supplied by Mr. Rider and that Mr. Stirone extorted money from Mr. Rider, the alleged extortion would be an act which obstructed, delayed or affected interstate commerce, and the movement of commodities in interstate commerce.

Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed.

The second essential element which must be proved beyond a reasonable doubt in order for you to find a verdict of guilty is the fact of extortion, of which Mr. Stirone stands here accused. I have defined the term for you as the obtaining of property, including money, from another with his consent which is induced by wrongful use of fear.

Mr. Stirone admits having received a sum of money from Mr. Rider or Rider Supply Company in the amount of $31,274.13, which was paid by a series of checks during a period from February, 1952 until January of 1954. These checks are in evidence and the receipt of money by Mr. Stirone is not one of the questions in issue. That is admitted. Nor is there any question involved here that the money was paid to Mr. Stirone with the consent of Mr. Rider. Mr. Rider paid the money of his own volition.

However, as you are undoubtedly aware, there is much disagreement between the parties as to whether Mr. Rider's consent was induced by a wrongful use of fear by Mr. Stirone. That is the question you must decide.

First of all, what does the statute mean by the word "fear" and what does the word mean as used by the Government in this case? All of us have had personal experiences involving a fear of some unfortunate impending event. It is an emotion of anxiety, concern alarm or even dread. We may fear for our personal safety or our family's or the safety of our property or for our jobs or businesses.

It is alleged by the Government that Mr. Stirone induced Mr. Rider to pay money by causing him to fear that otherwise his business would in various ways be interfered with to Mr. Rider's economic loss. Therefore, strike from your mind any erroneous impression you may have that anything but fear of economic loss is involved in this case.

According to Mr. Rider, Mr. Stirone in September of 1951 in the company of Mr. Dierker, approached him and demanded 50 cents for each cubic yard of concrete to be furnished by Rider under the Ragnar-Benson contract, and it is alleged that the defendant then told Rider that he would not be able to hold the contract unless the payment were made. It is also contended by the Government that at the same time there was an intimation that Mr. Rider would have labor troubles unless the payments were made to Mr. Stirone as demanded.

Mr. Rider testified for the Government as a witness to those alleged events and it is for you to determine whether the testimony is accurate, reliable and truthful in whole or in part. He is an important witness and his testimony should be carefully weighed and considered by you in determining whether it may be accepted as a basis for convicting the defendant upon evidence satisfactory to you beyond a reasonable doubt.

If you find that the alleged transaction in September of 1951 occurred, that alone would not be sufficient to convict the defendant unless you further find that he, the defendant, acted with deliberate and purposeful intention of causing Mr. Rider to fear that his business would be injured if he did not comply with the demand for the money, that Mr. Rider was actually put in fear that the consequences allegedly threatened would follow, if he did not pay the money and that Mr. Rider's fear was reasonable under the circumstances and that he paid the money for that reason.

How are you to determine the intention with which Mr. Stirone acted if you find that he did the act of which he is accused, as contended by Mr. Rider and the Government? The defendant may not be found guilty of a violation of the statute simply because he received money from

Mr. Rider. The mere receipt of money by a labor representative from a contractor does not constitute a violation of the statute involved and you, the jury, must not concern yourself with the question whether Mr. Stirone's dealings with other contractors were proper or improper by some other standard. The only question for your determination is whether the defendant extorted money from the contractor in this action, William G. Rider.

Mr. Stirone contends that the payments which he received were legitimate commissions for his, Stirone's, assistance to Rider in securing the Ragnar-Benson contract. If you believe the evidence of the defendant, it is obvious that no crime has been committed under the statute and it will be your duty to acquit the defendant of the charge against him.

If you do not believe the evidence of the defendant, you may nevertheless not convict him unless you find that he intended to extort money.

Intent or intention are difficult terms to define. They practically define themselves. However, intent means doing an unlawful act, intentionally. That is, freely, purposely. It means knowingly doing an act which is forbidden by law. I doubt if I can give you a better definition than that.—A specific wrongful intention to do the act which the law prohibits. A guilty verdict should not be rendered by you unless this state of mind on the part of the defendant is found from the evidence.

All of you are experienced in the affairs of the world and you are continually being called upon to decide from actions or statements of others, what their intentions or purposes are Consider all of the circumstances as they relate to the intentions of this defendant in determining his guilt or innocence. Since you can not see into his mind you have to deduce his intentions and his state of mind from his conduct as described by you and his actions and his statement as detailed by the witnesses who you decide are trustworthy and worthy of belief.

You have been instructed by the Court that unless Mr. Rider was actually put in fear by the intentional conduct of the defendant, there could be no conviction and unless his fear was reasonable under the circumstances, there could be no conviction under the present indictment.

You have heard the testimony in this case of Mr. and Mrs. Rider as to Mr. Rider's condition of mind at the time of and after the alleged conversation between the defendant and Rider took place, as well as the testimony relating to Mr. Rider's knowledge about the defendant as an important figure in labor activities.

It is for you to decide what the facts are and to arrive at a conclusion based upon the evidence whether Rider was placed in a reasonable fear that the defendant would cause the contract to be lost or as contended, would induce labor troubles unless his wrongful demand for payment was met. If you are satisfied beyond a reasonable doubt that the defendant intended to and did put Mr. Rider in fear that the contract would be terminated or labor troubles would ensue, if the alleged wrongful demand for payment was not met and that Mr. Rider actually experienced a reasonable fear that those consequences would follow if he did not pay the defendant and that the payments were thereafter made because of Rider's fear, then you should conclude that the defendant is guilty of the offense charged against him in the indictment.

The Court instructs you that it is immaterial whether or not the defendant did have sufficient influence or sufficient power among labor unions or with contractors, including the Ragnar-Benson Company, that he could prevent Mr. Rider from acquiring or holding the contract for the supplying of ready-mixed concrete or the bringing about of labor troubles. If the defendant intended to and did put Rider in fear that those consequences would result from the failure to pay as requested and Rider reasonably thought the defendant had such power, the defendant could be convicted under this statute although he in fact had no such influence or power.

The defendant has offered two separate defenses to the accusation of the Government. The first of these is that the defendant did not extort money from Mr. Rider but that he and Rider entered into a bona fide business arrangement whereby for the payment of a commission the defendant agreed to help Rider obtain the Ragnar-Benson contract and did so.

In his contention, he was supported by the testimony of Mr. Dierker, the president of the Duquesne Slag Products Company, on whose premises Mr. Rider operated a leasehold. You will recall also the testimony of Mr. Kassab of the Ragnar-Benson Company with respect to his conversations with the defendant, the time thereof and the influence of the defendant in the determination of whether or not Rider would be given the contract.

It is the contention of the defendant that Mr. Stirone with the approval and consent of Mr. Rider, interceded and gave assurances to the Ragnar-Benson Company concerning Rider's ability to perform the contract and thus was entitled to be paid the commissions which the defendant alleges were agreed upon by Rider because the defendant and Mr. Kassab say he was instrumental in securing the contract.

As you know, it is the contention of Mr. Rider that he had obtained the contract before his meeting with Mr. Stirone.

The defendant has no burden of proof to sustain as to the defense of a legitmate contract. It is enough if the evidence on this score, either alone or together with other evidence in the case, leaves a reasonable doubt as to his guilt, in which event he must be acquited. If on the other hand you find the defendant, Nicholas A. Stirone intended to and did extort money from William G. Rider by inducing in Rider a fear of economic loss or injury to his business it is immaterial whether the defendant actually did intercede with the Ragnar-Benson Company on Rider's behalf since in that case, such intercession would not have been done with the consent or approval freely given of Mr. Rider.

The second defense which has been offered on behalf of the defendant is what the law calls the defense of alibi. The defendant contends and has offered evidence for the purpose of showing that he was away from Pittsburgh on union business at the time of the alleged conversation with Rider in September of 1951 and at the time of the alleged delivery of the first check in February of 1952.

It is the burden of the Government to prove every element of the offense charged against the defendant beyond a reasonable doubt. The defendant is not required to disprove those charges. When the defendant comes forward with a defense, he does so in order to raise a reasonable doubt of guilt in your minds.

An alibi simply means that the accused was at another place at the time the act charged is alleged to have been committed and therefore could not have committed it. All the evidence should be carefully considered by you and if the evidence on this subject alone or considered with all the other evidence is sufficient to raise a reasonable doubt as to the guilt of the defendant, you should acquit him. The accused is not required to prove an alibi beyond a reasonable doubt or even by a preponderance of evidence. It is sufficient to justify an acquittal if the evidence upon that point satisfies you that the defendant was in fact at another place when the act charged was committed or raises a reasonable doubt of his presence at the time and place of the commission of the act charged and you will understand also that the attempt of the accused to prove an alibi or any defense does not shift the burden of proof from the prosecution, but that the prosecution is bound to prove his presence beyond a reasonable doubt.

From what I have said to you so far, members of the jury, it is obvious that the issue of whether the defendant extorted money from Mr. Rider depends upon the credibility and reliability of the witnesses who have appeared in the case. It is difficult for me to recall a case in which the lines were more sharply drawn between the testimony of the various parties and their witnesses.

As you are the judges of the fact, so are you, the members of the jury, the sole and exclusive judges of the credibility of any witness who has taken the stand and given testimony under oath. With that question, the Court has nothing to do. You should take all the evidence adduced both by the Government and by the defense and give such evidence full, fair and impartial consideration. Should there be conflicts in the testimony of different witnesses as there are in this case, you should reconcile such conflicts if you can consistently do so for the law presumes that a witness has told the truth but if you can not reconcile conflicting statements of different witnesses, you are the sole and exclusive judges of the credibility of the witness and the weight to be given their testimony. In other words, if there are conflicts in the testimony of the witnesses, you should harmonize such conflicts upon the basis of truth, if this can be done reasonably and consistently with reason but if conflicting testimony can not be so reconciled in your minds, you and you alone are to say and to find who and what is to be believed.

In determining the weight and credibility of the witness' testimony, you should take into account the manner and demeanor of the witness on the stand. You should consider the reasonableness or the unreasonableness, the consistency or inconsistency, the probability or improbability of what he or she has said. You should look to his or her interest or lack of interest in the result of the trial, to his or her relationship, if any, to a party to the litigation, to his or her motive to speak the truth or to his or her motive to swear falsely, to his or her means of knowledge, his or her opportunity to know whereof he or she speaks and to his or her bias, prejudice or feeling, if any such be shown, or to his or her lack of such emotion or to any discrepancy in his or her testimony.

The testimony of the defendant who is on trial in a criminal case is to be considered and weighed by the members of the jury taking all of the evidence into consideration and giving such judgment to the testimony as in your judgment it ought to have. In other words, the testimony of the defendant is to be considered by you in the same manner as the testimony of any other witness who speaks from the witness stand.

If you believe that any witness has willfully sworn falsely to any material fact in this case, you are at liberty to disbelieve the testimony of that witness in whole or in part or believe it in part and disbelieve it in part, taking into consideration all of the facts and circumstances of the case.

I have requested you on numerous occasions throughout these proceedings to refrain from reading newspaper articles or listening to radio and television broadcasts pertaining to the case or discussing the case among yourself or with others. I am sure you have acted in accordance with the Court's request. If you are sympathetic or prejudiced in favor of any party, you should not allow it to influence you at all in your verdict, but in your verdict you should be guided alone by the evidence and instructions given you by the Court. Sympathy and prejudice must be put aside entirely.

The defendant, Mr. Stirone, has introduced evidence as to his good character. I say to you, as a matter of law, that this is his right and privilege. Evidence of good character is substantial evidence. It is not a mere make-weight thrown into a doubtful case. Therefore, having been put in evidence in this case, it becomes your duty to consider it with the other evidence in the case and when so considered in connection with all the other evidence in the case, it may either alone or considered with other facts generate a reasonable doubt.

In connection with the character evidence in this case, I permitted questions whether or not the various witnesses had heard rumors as to prior conduct on the part of the defendant similar to that alleged against him here. I tried to convey to you then that the question was allowed only for the purpose of testing the standards of the witnesses who were testifying to the defendant's character. That is the only purpose for which the evidence as to such rumors may be considered by you.

The Court has allowed the Government to introduce evidence as to the alleged wrongful obtaining by the defendant of money from other contractors on other occasions which I will not go over in detail. I am referring to the matters relating to the Doherty Company and the Hawthorne Company and will ask you to recall not only the testimony of the Government's witnesses, but as well the testimony introduced by the defendant on cross examination and in surrebuttal tending to show whether or not such acts were committed by the defendant on other occasions.

Evidence that an act was done at one time or on one occasion is not any proof whatever that a similar act was done at another time or on another occasion. That is to say, evidence that a defendant may have committed another act of a like nature may not be considered in determining whether the accused committed the offense charged in the indictment, nor may evidence of alleged other acts of a similar nature be considered for any purpose unless the jury first find that the other evidence in the case, standing alone, establishes beyond a reasonable doubt the accused did the particular acts charged in the indictment.

If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the acts charged in the indictment, then the jury may consider evidence as to the alleged other acts of a similar nature in determining the state of mind or intent with which the defendant did the acts charged in the indictment or the jury may consider evidence as to alleged other acts of a similar nature in determing whether the defendant had a plan or scheme of which the acts charged in the indictment were part for obtaining money from contractors by extortion and if the proof of alleged other acts of a similar nature is established by evidence which is clear and convincing, the jury may draw therefrom the inference that in doing the acts charged in the indictment, the defendant acted willfully and with a specific intent and not because of an innocent reason or that he acted in pursuance to his plan or scheme for obtaining money by extortion. All of this presupposes that the jury first find beyond a reasonable doubt that the defendant did the acts charged against him in the indictment.

I caution and instruct you, members of the jury that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment. Evidence as to such other acts may be considered by you only for the purpose of shedding light on the intention of the defendant or on whether his conduct discloses a scheme or plan to obtain money by extortion. If you are satisfied that the evidence shows such an intention or such a plan or scheme, this would be relevant in determining whether the defendant is guilty of the charge in the indictment.

To briefly summarize the elements involved in this action, it is the contention of the Government that the defendant extorted money from William G. Rider by causing him to fear that he would lose the Ragnar-Benson contract or that labor troubles would follow if the money was not paid.

The Government contends that the defendant deliberately and intentionally induced that fear in Mr. Rider and that Rider was actually put in fear that he would sustain harm or injury in his business if the money was not paid and that Mr. Rider's fear was reasonable because he knew that the defendant was an influential man in labor union circles.

It is contended by the Government that the act of the defendant obstructed, delayed and affected interstate commerce because materials used by Mr. Rider had been shipped in interstate commerce and were being used in the construction of a plant, which would manufacture articles to be shipped in interstate commerce.

The defendant admits receiving money from William G. Rider but denies any act of extortion and contends that the money truly represented commissions as the checks stated and that the commissions were the result of a bona fide contract voluntarily entered into by William G. Rider with him whereby he, the defendant, agreed to perform a valuable service and intercede with the Ragnar-Benson Company to give the contract to Mr. Rider.

Secondly, he contends that he was not in Pittsburgh at the time of the alleged extortion as testified to by Mr. Rider and moreover, that he was not in Pittsburgh at the time Rider allegedly delivered the first extortion check to him.

He contends that his reputation for truthfulness, honesty and fair dealing as testified to by numerous witnesses is inconsistent with his having committed the act alleged in the indictment.

All such matters are for you because you are the sole judges of the facts. You are to decide the truth. If you believe the testimony of the defendant, you must find him not guilty. On the other hand, if you are satisfied beyond a reasonable doubt that the defendant intended to and did extort money from William G. Rider, you would be warranted in rendering a verdict of guilty on the evidence, if you find further that the evidence relating to interstate commerce as introduced is true.

As I have repeatedly told you, these instructions must not be taken by you as any indication that the Court has formed an opinion as to the guilt or innocence of the defendant. Disregard any opinion you think the Court might have. The Court has no such opinion and is interested only in helping you to arrive at a true verdict. It is your responsibility alone to find the relevant facts and decide the case on the evidence. Your verdict should represent the conscientious, considered judgment of each juror.

I think that you know that your verdict must be unanimous. When you retire to deliberate, consider the evidence and each of you should discuss your views on the evidence freely and openly in the light of reason and common sense, bearing in mind at all times that you would violate your sworn duty if you base your verdict on anything but the evidence heard in the courtroom and these instructions on the law.

Does counsel for the Government or counsel for the defendant have any further requests for charge?

MR. CASEY: I have no further requests for charge except I would like to call attention of the Court in his charge concerning the testimony of the defendant. The latter part of the charge, I would ask that that be enlarged to include the testimony of defendant's witnesses, and the defendant.

THE COURT: Yes, well, I referred to the testimony of witnesses in my charge and I stated that the testimony of the defendant was to be considered and weighed the same as the testimony of any other witness and of course, that applies to the defendant's witnesses. I think that has been thoroughly covered in the charge.

MR. TEITELBAUM: Government has no additional requests for charge.

MR. CASEY: May I see the Court at Side Bar?

AT SIDE BAR

MR. CASEY: The only thing that I had on that latter part was you said if you believed the testimony of the defendant.

THE COURT: And his witnesses.

MR. CASEY: That's what I wanted to get to.

MR. TEITELBAUM: I made a little check. You covered every point except the one thing you didn't say if he had the fear whether it was with regards to who introduced the fear, Rider or Dierker, - or Stirone or Dierker. I don't think you ought to open it up again.

THE COURT: I will make a further statement of the testimony of the defendant and his witnesses.

MR. CASEY: Yes, in line, just add that to your charge.

I except to the Court's reading of the indictment as to the threats of loss, particularly Paragraphs 4, 5 and 6 and the Court's charge as to fear since there is no evidence or any inference of fear in the evidence.

I object to the Court's charge as to the fear of economic loss and I also except to the Court's charge as to interstate commerce, especially as to the sand and particularly to the Pittsburgh Steel mill.

I object to the Court's use of the word "influential man in labor" and "important figure". I also object to the Court's instruction as to rumors, there having been no rumors shown on the part of the Government. I except to the Court's charge as to the other crimes, there being no similarity or scheme shown by the evidence.

I also object and except to the Court's charge as to the payments thereafter made because of fear, there having been no evidence of same.

I object to the Court's charge that it was immaterial as to the influence of Stirone as to labor trouble.

MR. TEITELBAUM: I have no objections.

IN OPEN COURT

THE COURT: Members of the jury, I just wish to add this. I have referred to my charge to Mr. Stirone being an influential man in labor circles. I just wish to state that I am making that statement because that is the Government's contention and I mean by that according to the Government's witnesses, he is an influential man.

I have also been requested by counsel for the defendant to add with respect to my instructions to you with respect to witnesses that it covers the defendant and the defendant's witnesses. When I speak to you about the testimony of witnesses, I refer to the witnesses produced by the Government, I refer to the testimony of the defendant himself and I refer to all those witnesses called by the defendant.

Is that satisfactory, Mr. Casey?

MR. CASEY: Satisfactory.

THE COURT: Now, does the clerk have a verdict slip for me? (Verdict slip handed to Court.)

Members of the jury, the clerk has prepared a verdict slip, which reads as follows: "And now, to wit, June blank, 1957, we the jurors impanelled in the above case, find," and you will insert, "find the defendant guilty or not guilty," as the case may be and insert the date and there are twelve lines on this verdict slip, and each of you are required to sign the verdict slip.

Are the exhibits ready to go out with the jury?

THE CLERK: The exhibits are all in boxes and ready to go out. They have been checked.

THE COURT: All right, then the alternate jurors, at this time, we will excuse you from further service in this case and extend to you the thanks of the Court for the service you have given to date.

Will the bailiffs please come forward and be sworn? (Bailiffs sworn by the clerk.)

(Whereupon, at 10:55 a.m., the jury retired.)

AFTERNOON SESSION 3:30 p.m.

THE COURT: Members of the jury, have you agreed upon a verdict?

THE FOREMAN: We have, Your Honor.

THE COURT: May we have it?

THE CLERK: Members of the jury impanelled in the case of the United States of America, against Nicholas A. Stirone, defendant, No. 14871 Criminal, you say you find the defendant guilty as charged. So say you all.

THE COURT: What about the bond, Mr. Teitelbaum?

MR. MALCOLM ANDERSON: Mr. Stirone has been free on bond and we see no reason why the bond should not be continued until such time as the Court desires to sentence him. Does the Court want to sentence him now?

THE COURT: No.

MR. RICH: Your Honor, we are going to file an appeal within the required number of days.

THE COURT: You are going to file it. You will file the usual motions, is that what you say?

MR. RICH: Yes, motions.

THE COURT: No, I don't believe I'll sentence him now.

MR. ANDERSON: May we have the bond continued?

THE COURT: The bond will be continued. You are satisfied with the amount?

MR. ANDERSON: Yes, I don't think he's going to go out on it.

CERTIFICATE

I HEREBY CERTIFY that the foregoing pages contain a complete and accurate copy of the Stenotype notes taken by me at the trial of the foregoing case commencing on June 4, 1957, before the Honorable John L. Miller and a jury.

Erma M. Pock

Harriet C. Thomas

X

OPINION OF THE COURT

MILLER, District Judge

Following trial and conviction for a violation of §1951 of Title 18, U.S.C.A., the defendant Nicholas Stirone has filed motions for arrest of judgment, for acquittal and, in the alternative, for a new trial. The substance of the single count indictment was that the defendant, a union official, obstructed, delayed and affected interstate commerce and the movement of materials in interstate commerce by the extortion of $31,274.13 from William G. Rider. The extortion was alleged to consist of the obtaining of money by defendant's wrongful imposition on the victim of a fear of economic loss. 18 U.S.C.A. §1951(b) (2). Rider, a supplier of ready-mixed concrete, had obtained a valuable subcontract to furnish the concrete requirements for the construction of a new plant at Allenport, Pennsylvania, for Pittsburgh Steel Corporation. The principal contractor on the project was Ragnar-Benson Company, which began construction in September 1951. Rider operated a batching plant at Belle Vernon, Pennsylvania, on the premises of the Duquesne Slag Products Company from which he was required to purchase the sand and slag aggregate used in manufacturing the concrete. According to the government contention, the defendant, in the company of Dierker, the president of Duquesne Slag Products Company, visited Rider at his batching plant shortly after September 13, 1951. It was alleged that while the three were seated in an automobile the defendant made an unlawful demand for payment of $.50 on every cubic yard of concrete furnished under the Ragnar-Benson contract as a price for Rider's continuing to hold the contract. Rider, called as a witness by the government, testified that when the demand was made he "got mad" and left the automobile after which Dierker joined him, persuading him to agree to the defendant's proposal and telling him that an adjustment would be made in the price of slag. Following Rider's consent to the proposal, defendant allegedly told him he would keep Rider out of labor trouble. Numerous checks were given to the defendant periodically from April 1952, until January 1954. The payments were entered on Rider's books as commissions. The defense countered with an alibi and with a contention that the payments represented true commissions as consideration for the defendant's agreement to use his influence with Ragnar-Benson to secure the subcontract mentioned above for Rider.

Conceding that the evidence must now be viewed in a light most favorable to the government, *United States v. Migiorino,* 3 Cir., 1956, 238 F. 2d 7, 10, the defendant contends that the evidence produced by the government at the trial was not sufficient to support the verdict of guilty. He argues first that the alleged extortion was not shown to have affected, obstructed or delayed commerce in any substantial way and second, that the alleged extortion payments were not shown to have been made by Rider because of fear.

In the indictment it was charged that the defendant by his coercive actions obstructed, delayed and affected interstate commerce and the movement of materials and supplies—i.e., sand, in interstate commerce. It was then proved at the trial that sand used by Rider in manufacturing ready-mixed concrete and purchased from Duquesne Slag Products Company had without question been transported in interstate commerce, and secondly, that steel articles produced at the plant after construction had been transported in commerce to the centers of the appliance and automotive industries outside the State of Pennsylvania. A sufficient foundation for introduction of both kinds of proof was laid in the indictment.

Defendant's denial that interstate commerce was affected by his actions is based in part upon an argument that interstate commerce ended with the delivery of the sand in Pennsylvania; that the interstate character of the sand was lost when it was delivered to and stored by Duquesne Slag Products Company and Rider; and that the sand lost its identity as a separate article of commerce when it was mixed with other ingredients to form a new product, ready-mixed concrete. The conclusion is said to follow that the present prosecution is founded upon a forbidden attempt to exert federal control over purely local matters—manufacture of ready-mixed concrete and the performance of a building subcontract. The answer to defendant's contention is that the power of Congress to regulate commerce is plenary and the power to regulate includes the power to protect commerce "no matter what the source of the dangers which threaten it." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 1937, 301 U.S. 1, 37. Racketeering affecting interstate commerce is clearly within the federal control, *United States v. Green*, 1956, 350 U.S. 415, 421, and commerce may be affected even though the actual movement of goods has ceased and the character of the goods altered in the hands of the consumer. Since the act of Congress was intended to insure the free flow of articles in interstate commerce, the only criteria which this court may properly employ to determine whether the act is applicable are whether the channels of interstate commerce have been used and whether the free passage of articles therein has been threatened. The court correctly told the jury that if the government's facts were believed, interstate commerce had been affected by the conduct of the defendant. Cf. *United States v. Lowe*, 3 Cir., 1956, 234 F. 2d 919, 922-923, cert. denied, 1956, 352 U.S. 838. That statement was based upon a premise that a deliberate act which tends to prevent articles from being used once they have reached their destination after being shipped in interstate commerce dams up the stream of commerce and delays, obstructs and affects interstate commerce as surely as though the same act had cut off the supply at its source. *Nick v. United States*, 8 Cir., 1941, 122 F. 2d 660, 668, cert. denied, 1941, 314 U.S. 687; *Hulahan v. United States*, 8 Cir., 1954, 214 F. 2d 441, 445, cert. denied, 1954, 348 U.S. 856.

Defendant also urges that the "new construction" doctrine prevents consideration of the interstate shipment of products manufactured at the plant following its completion in determining whether the extortion here affected interstate commerce. That doctrine appears no longer to be controlling in cases arising under the Federal Employers' Liability Act and the Fair Labor Standards Act where it arose. *Southern Pacific Co. v. Gileo*, 1956, 351 U.S. 493; *Mitchell v. G. W. Vollmer & Co., Inc.*, 1955, 349 U.S. 427. Nor was it considered in *Hulahan v. United States*, 214 F. 2d 441, under circumstances similar to the instant case. There is no reason for adopting so restrictive an interpretation of the act.

Aside from the question of federal jurisdiction, the issues affecting guilt under the statute are whether the victim was fearful, whether that fear was reasonable and whether the defendant knowingly made use of that fear to obtain the property of another. We turn to the argument that there was no showing that the payments were motivated by fear. "Fear" in the statutory sense of course includes a deliberately imposed fear of economic loss such as might result from an intentional interference with a valuable contract right. This proposition is well settled. *Bianchi v. United States*, 8 Cir., 1955, 219 F 2d 182, 189, cert. denied, 1955, 349 U.S. 915; *United States v.*

Dale, 7 Cir., 1955, 223 F. 2d 181, 183; *United States v. Varlack*, 2 Cir., 1955, 225 F. 2d 665, 668-669; cf. *Callanan v. United States*, 8 Cir., 1955, 223 F. 2d 171, 175, cert. denied, 1955, 349 U.S. 915; *Hulahan v. United States*, 214 F. 2d 441. It is equally clear that the subjective mental state of the victim is a relevant and important subject for testimony in determining the presence or absence of the requisite fear. *Nick v. United States*, 122 F. 2d 660, 671; *Callanan v. United States*, 223 F. 2d 171, 174. It was shown that the defendant was a responsible and important union official. During the period involved, the defendant was president of Local No. 1058 of the International Hod Carriers, Building and Common Laborers Union of America; he was president of the Heavy Engineering, Railroad, Contracting and Highway Construction Council which acted as bargaining agent for unions composed of carpenters, operating engineers, laborers and teamsters; he was chairman and spokesman for the Laborers' District Council, the bargaining agent which represented numerous unions affiliated with the Hod Carriers International. His position was known to Rider. In prosecutions under the act, the victim may testify, as did Rider, to his state of mind and motive in meeting the unlawful demand. *Bianchi v. United States*, 219 F. 2d 182-190. Rider's declarations to his wife and his conduct following his return from the alleged shake-down interview could also have been considered by the fact-finding body. 2 Wigmore, Evidence §661 (3d ed. 1940). Under the circumstances, it was for the jury to determine whether the payments were made by Rider, as the government contended, because of fear imposed by the defendant or, as argued by defendant, because of Dierker's persuasion and statements to Rider that an adjustment would be made in the price of slag.

It is next suggested that the government's improper use of subpoenas requires the granting of a new trial. See Rule 17, F.R.Cr. P., 18 U.S.C.A. In many instances subpoenas were issued commanding the appearance of witnesses to testify in the "United States District Court for the Western District of Pennsylvania" at "633" or at "644" New Federal Building, Pittsburgh, the latter being room numbers of the offices of the United States Attorney. The procedure followed is disapproved. The validity of the subpoenas from the viewpoint of the witnesses is not in question since each took the stand and without objection gave testimony in response to the subpoena. *In re Meckley*, 1943, M.D. Pa., 50 F. Supp. 274, affirmed, 1943, 3 Cir., 137 F. 2d 310, cert. denied, 1943, 320 U.S. 760; 97 C.J.S., Witnesses §§22, 25, p. 374 (1957). Assuming that defendant has standing to object to a misuse of the subpoena power, a valid objection must be based on prejudice to his cause. The United States Attorney informs the court that the subpoenas were drawn in the form described above only to insure the keeping of proper records for the payment of witness fees. There is no averment or proof of ulterior purpose or of prejudice. There accordingly is nothing before the court to justify a presumption of injury to some substantial right of the defendant. See Rule 52(a), F.R.Cr.P., 18 U.S.C.A.

The defendant contends the admission of testimony showing other alleged unrelated offenses for the purpose of proving intent and scheme or plan was error. This evidence was elicited from the witnesses Doherty and Hawthorne. Doherty was the owner of an out-of-state demolition contracting firm and Hawthorne a former officer of another. The two firms were separately engaged in demolition projects in downtown Pittsburgh in 1952. Each witness testified that he had paid money to the defendant in that year. Doherty testified that at a pre-arranged meeting in May of 1952, the defendant demanded payment of $35,000. His story, if believed, admitted of only one interpretation—that as the price of being "a pretty cocky little guy," that is, refusing the defendant's demand, Doherty was subjected to an onslaught of labor difficulties which eventually required him to change his mind. The payments in this instance took the form of deliveries of scrap metals from the job to a dealer for the defendant's account, the dealer, according to Doherty, having acted as a middleman in the illegal transaction. Hawthorne's testimony indicated that the defendant had asked him for the sum of $1000, telling him the money was for "political purposes" or as on other occasions when money had been requested, for the "welfare fund." He said that he gave the money to the defendant "because I felt I had to" and ". . . I had heard that, in fact I had seen, I could look down the street and see Mr. Doherty's job, and I seen the procedure of the work, and I thought it would be best to go along with the crowd." There was further, competent testimony by Duval, an employee of the Hawthorne Company, that at Hawthorne's instructions in September 1952, he had sent $1000 of company funds to the defendant. On cross-examination, Hawthorne testified that no threats were made by the defendant and that he did not think he had been "shook-down." Defendant argues that the government was bound by the assertion of its own witness that there had been no shakedown. This is not the case. While the witness' notion, on cross-examination, of a shakedown was relevant, it was not conclusive. The government is not bound by the testimony of prosecution witnesses. The jury is free to believe part of what a witness says and discount the rest. *United States v. Gordon*, 3 Cir., 1957, 242 F. 2d 122, 126, cert. denied, 1957, 354 U.S. 921; cf. *United States v. Frank*, 1956, W.D. Pa., 151 F. Supp. 866, 873, affirmed, 3 Cir., 1957, 245 F. 2d 284, cert. denied, 1957, 26 L.W. 3109. If the direct testimony of the witness did not completely establish an extortion, it tended to do so, which was all that was required to justify its admission for the purpose of showing intent or plan. Cf. *Commonwealth v. Heintz*, 1956, 182 Pa. Super. 331, 336, 126 A. 2d 498, 501. Situations are frequently so well understood that words are unnecessary.

In brief, there may be an extortion although no express threat is made. Cf. *Callanan v. United States*, 223 F. 2d 171, 175-176.

Defendant would concede the proposition that evidence of the commission of similar and related offenses tends to show "a consistent pattern of conduct highly relevant to the issue of intent." *Nye & Nissen v. United States*, 1949, 336 U.S. 613, 618. Citing *Farkas v. United States*, 6 Cir., 1924, 2 F. 2d 644, he denies that criminal intent was in issue since, it is argued, the crime under 18 U.S.C.A. §1951 consisted of the obtaining of money by the making of threats of economic loss and did not depend on the actor's intent. However, there is no question that intent was an ingredient of the offense charged even though the term is not employed in the statute. *Morisette v. United States*, 1952, 342 U.S. 246; see *United States v. Varlack*, 225 F. 2d 665, 668. Evidence of other offenses was not, in the present prosecution, admitted during the case in chief but on rebuttal after the defendant had admitted the receipt of money from Rider. He had explained the transaction as a business arrangement and corroborative testimony was offered to support his explanation. Since the transfer of money was conceded, and in itself innocent, evidence of the defendant's intention was material in determining whether his or the government's theory should be accepted. 2 Wigmore, Evidence §§302, 352(2), (3d ed. 1940); *United States v. Blount*, 2 Cir., 1956, 229 F. 2d 669, 671-672. Defendant also argues that if the testimony of the prosecution witness was to be believed at all, the necessary evil intent was established and there was no need for cumulative evidence on this issue. Nevertheless it was not improper to receive the evidence of other offenses as rebuttal in the circumstances of this case. Cf. *Harper v. United States*, C.A. D.C., 1956, 239 M. 2d 945, 947.

It is also urged that the evidence was not admissible to show scheme or plan, the other purpose for which it was admitted. Evidence of another criminal act is admissible for such a purpose "if it is so related to or connected with the crime charged as to establish a common scheme or purpose so associated that proof of one tends to prove the other, or if both are connected with a single purpose and in pursuance of a single object. . . ." *Bracey v. United States*, C.A. D.C., 1944, 142 F. 2d 85, 88, cert. denied, 1943, 322 U.S. 762. Defendant's only objection to the court's instruction with respect to the testimony of other offenses was that there was no similarity or scheme shown by the evidence.* We disagree. The defendant's own statements reported by Doherty revealed an overreaching plan to compel the payment of money by employers. The statements that "you know I have a price tag of $35,000 on that job" and that "the contractors here and myself have made an agreement that there is a $35,000 take on this job," fairly disclose that the defendant followed a course of conduct of placing price tags on various jobs within his jurisdiction. The necessary showing of "plan" requires substantial similarity of offenses, not identity. Here there is propinquity of time and place; those who employed local labor were the victims; it could be conclusively found that the payment of money was motivated by fear of economic loss in each instance. There is a sufficient "concurrence of common features." 2 Wigmore, Evidence §304 (3d ed. 1940). Only in the Hawthorne case was there no evidence of the direct making of threats. This court is satisfied that the evidence of the multiple instances described above in light of the defendant's statements discloses that the acts charged in the indictment were undoubtedly part of the same determined plan for the levying of tribute. Cf. *United States v. Wall*, 7 Cir., 1955, 225 F. 2d 905, cert. denied, 1956, 350 U.S. 935; *Commonwealth v. Hradesky*, 1951, 170 Pa. Super. 24, 84 A. 2d 393, 395-396.

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*Defense counsel's objection was "I except to the Court's charge as to other crimes, there being no similarity or scheme shown by the evidence." (R. 1436)

The defendant contends further that evidence of other crimes may be introduced to show scheme or plan only when the doing of the act is in issue and that in this instance the act was conceded. See 2 Wigmore, Evidence §§300(3), 304. However, that was far from being the case. Defendant admitted the payment of money and a business meeting. These concessions did not embrace the act alleged by the government: that of extortion initiated by the defendant at an essentially different meeting at a different time and place. There was a proper evidentiary foundation for the proof of scheme or plan.

The court rejects the contention that admission of such evidence was foreclosed by the pre-trial order of our associate Judge Herbert P. Sorg refusing consolidation of the present indictment with indictments charging the other offenses mentioned above. Consolidation of indictments may have been refused for numerous reasons; no memorandum or opinion accompanied the order. There is no basis for assuming the determination of such a pre-trial matter limited the trial court's inherent authority to admit relevant evidence in light of the circumstances arising at the trial.

The defendant argues that the court abused its discretion by permitting the government on cross-examination to range through a field of collateral, prejudicial inquiry. He concedes that having taken the witness stand, he enjoyed the same privileges but suffered the same limitations as any other witness. *Johnson v. United States*, 1943, 318 U.S. 189; *United States v. Bradley*, 3 Cir., 1945, 152 F. 2d 425, 426. The rule is that the cross-examination should be confined within reasonable bounds to the subjects of the direct examination, *Banning v. United States*, 6 Cir., 1942, 130 F. 2d 330, 337, cert. denied, 1942, 317 U.S. 695, but it nevertheless extends to any matter opened up by a party whether or not the subject is strictly relevant. *United States v. Lowe*, 234 F. 2d 919, 922. Furthermore the defendant who takes the stand may have his credibility attacked in the same ways as any other witness and to that end the cross-examination is not limited to the scope of direct examination, *United States v. Lowe*, supra. Collateral inquiry within elastic limits is permissible for the purpose of impeaching the defendant's credibility. *United States v. Manton*, 2 Cir., 1938, 107 F. 2d 834, 835, cert. denied, 1939, 309 U.S. 664. The rulings of the court were within these limits.

However, the defendant says there was a violation of the rule that specific acts of misconduct not resulting in conviction of a felony or a crime of moral turpitude are not the proper subject of cross-examination for impeachment purposes. *Echert v. United States*, 8 Cir., 1951, 188 F. 2d 336; but see *United States v. Klaas*, 3 Cir., 1948, 166 F. 2d 373, 376 indicating the conflict of opinion on this matter. The author in 3 Wigmore, Evidence §982(1) suggests the examination should be confined to the trait of veracity and further that the defendant-witness is entitled to even greater protection from a possibly prejudicial inquiry into his history. §§891(3), 983(4). This rule, whatever its limit, is not the one with which the court was called upon to deal, for in this case the defendant's character had been placed in issue. That subject was opened during the cross-examination of the government's witness Moreschi, the president of the international union to which Local 1058 belonged. Moreschi's testimony was offered to show "[the defendant's] position in the labor organization, what his position is, the status of the management, what the District Laborers' Council is, what they do, to show Mr. Stirone's local labor position." While the ensuing examination did indicate the defendant's authority on a local level, it did not exceed the bounds of the offer. However on cross-examination, defense counsel elicited affirmative answers to the questions whether the defendant was "a good union man" and "good for your union," a matter about which the government could not originally inquire. *Michelson v. United States*, 1948, 335 U.S. 469, 476. The effect of this exceeding the scope of direct examination by venturing into the subject of defendant's union qualifications was to constitute Moreschi a defense witness as to that issue. Morgan, Basic Problems of Evidence, Vol. 1, p. 62 (1954). The government's re-examination of the witness was then pursued in a permissively leading manner to the end of requiring the witness to define his terms. In this interrogation, questions, now complained of but proper in context, were posed suggesting the commission of abusive and improper acts by defendant in connection with union control.

The defendant's union character was again brought in focus during his direct examination when he traced his union career from the time of his youth, presenting a very detailed picture of humble origin, growing responsibilities and principled leadership. He described the peaceful means he used in union organizing and in furnishing guidance in setting up a pattern of organization and operation for the particular union. On cross-examination, he was asked whether he had ever sent out gangs of 200 and 300 men under instructions to drive workers off the job or to use strong-arm methods and whether he had sponsored an unauthorized taking-over of a local union in the Johnstown area. There was renewed inquiry about a dispute between the defendant's local and the international resulting in the suspension of the local, as the result of the expulsion, inferentially improper, of an individual from the union. While the cross-examination terminated the inquiry, the government made an offer to call witnesses present in the court-room for the purpose of showing that if the questions asked were damaging to defendant's cause, they were not idle. If the matters touched on by government counsel would not ordinarily have been proper subjects of inquiry, they became so because the manner of the defendant's union activities had been opened by him. He could not then foreclose the interrogation to show that the impression he had created was false. Cross-examination as to whether he had employed unlawful or abusive methods was justified and relevant to the subject matter of the direct examination.

Further complaints are made regarding cross-examination concerning defendant's receipt of money from contractors other than Rider for the performance of services, his connection with the leasing of heavy construction equipment by his wife to local contractors, his private interest in other non-union operations and the union's payment of Mrs. Stirone's traveling expenses when she accompanied her husband on a business trip for the union. Some of these topics, for instance the defendant's business activities, were merely elaborations of matters touched upon in direct examination since the defendant had been presented as a union man and it was open to determine that he was not exclusively of that calling. Cf. *Branch v. United States*, 1948, 171 F. 2d 337; see also *Alford v. United States*, 1931, 282 U.S. 687. The business trip was an important item in the defense bearing on defendant's alibi and he himself first brought out the union's payment of his wife's expenses. However, the matters were obviously developed for the additional purpose of showing the defendant had done things which a union official should not do, thus directly affecting his character, and for reasons which have been stated were proper for that purpose. Cf. *United States v. Marino*, 2 Cir., 1956, 234 F. 2d 118, cert. denied, 1956, 352 U.S. 836.

Other errors are assigned with respect to the cross-examination as to items of income appearing in defendant's 1937 and 1938 income tax returns, his interest in a dairy farm and other matters. On these subjects, defendant was exposed to a type of detailed questioning not different from that used by his counsel in examining some of the government witnesses for the purpose as stated of testing memory. On direct examination the defendant had displayed an apparently good memory for many small, unimportant matters far removed in time from the date of the examination. The reliability of his recollection was as important in the case as was that of the government's witnesses.

The foregoing account does not exhaust the defendant's assignments of errors which he says are merely illustrative. There is no need to itemize. The court does not agree with his contention that the sole purpose and effect of the cross-examination was to humiliate and degrade the defendant and increase the probability of conviction for crimes not charged. On the contrary, the court is satisfied that the defendant was convicted of the offense laid in the indictment and that the verdict is supported by substantial, credible evidence.

There is no basis for consideration of the defendant's fifty-fourth assignment of error. On September 25, 1957, a month and three days after the expiration of the period allowed defendant for filing reasons in support of his motion for a new trial, a paper entitled "Defendant's Amendment to Motion for New Trial" was filed setting forth the following statement:

> "The distribution of a handbook containing instructions for the jurors in this case was prejudicial to the defendant. On September 24, 1957, counsel for the defendant learned that Genevieve Barr, Chief Deputy Clerk of the District Court, distributed and delivered to each juror on or about June 4, 1957 a pamphlet or handbook containing instructions for jurors. The said handbook contains numerous inaccuracies which prejudiced the right of the defendant to a fair trial. *United States v. Gordon*, 7th C.C.A. (Major J), July 16, 1957."*

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*26 L.W. 2043. A petition for rehearing before the court on banc was granted on October 23, 1957.

The caption of defendant's paper could not cause it to relate back to the time of the filing of the original motion and supporting reasons because the limitation of time provided for in Rule 33, F.R.Cr..P, 18 U.S.C.A., is mandatory. Rule 45(b) (2), F.R.Cr.P., 18 U.S.C.A. The purported amendment must therefore be treated as a motion made on the ground of newly discovered evidence since it was not presented within the period permitted by the court during the five days following the verdict. *United States v. Bertone*, 3 Cir., ... F. 2d ...., (decided November 1, 1957); see *United States v. Smith*, 1947, 331 U.S. 469, rehearing denied, 1947, 332 U.S. 784. Two of the conditions which must be satisfied before the court may award a new trial on the basis of newly discovered evidence are (1) that the evidence must in fact be newly discovered and (2) that there be facts alleged from which the court may infer diligence on the part of the movant in discovering such evidence. *United States v. Bertone*, supra; *United States v. Rutkin*, 3 Cir., 1953, 208 F. 2d 647, 649. By the motion, the court is told that counsel for defendant first learned on September 24, 1957, of the distribution of the pamphlet to the jurors and by a stipulation that counsel would, if necessary, so testify. This court accepts these statements as sufficient compliance with the first condition mentioned above, but it is obvious from the moving papers that there has been no showing of diligence on the part of the defendant in discovering the facts which are the basis of his motion. If it was error to distribute handbooks to the jurors, it was error to do so before the handing down of the opinion in *United States v. Gordon*, 7 Cir., supra. The distribution of such handbooks in civil and criminal cases has been common practice in this court for seven years and chief counsel for defendant, a distinguished, experienced member of the bar of this court, is chargeable with knowledge of its customs. The argument that the court may without regard to time award a new trial "in the interest of justice" must be rejected. *United States v. Smith*, supra.

Other points preserved by argument or brief do not require written analysis. The motion for arrest of judgment is denied without discussion since the sufficiency of the indictment was upheld by Judge Sorg on defendant's pre-trial motion to dismiss. *TCF Film Corporation v. Gourley*, 3 Cir., 1957, 240 F. 2d 711. For the reasons stated in this opinion, the motion for acquittal or in the alternative for a new trial will be denied.

An appropriate order is entered.

ORDER

AND NOW, December 5, 1957, it is ORDERED that the defendant's motions for arrest of judgment, and for judgment of acquittal or a new trial be, and the same hereby are, denied. It is FURTHER ORDERED that the United States Attorney produce the defendant before this court for imposition of sentence on December 11, 1957 at 10:00 A.M.

(s) JOHN L. MILLER
United States District Judge

CC: VINCENT M. CASEY, *Esq.*
720 Grant Building
Pittsburgh 19, Pennsylvania

HONORABLE D. MALCOLM ANDERSON
United States Attorney
633 New Federal Building
Pittsburgh 19, Pennsylvania

XI

MOTION FOR JUDGMENT OF ACQUITTAL OR A NEW TRIAL

AND NOW this 24th day of June, 1957, comes Nicholas A. Stirone, defendant above-named, by his respective attorneys, and renews his Motion for Judgment of Acquittal made at the close of all the evidence in this case said Motion having been denied, and in the alternative moves the Court to grant him a new trial in accordance with the Federal Rules of Criminal Procedure for the following reasons:

1. The Court erred in denying defendant's Motion for Acquittal at the conclusion of the evidence offered by the government.

2. The Court erred in denying defendant's Motion for Judgment of Acquittal made at the conclusion of all the evidence in the case.

3. The verdict is contrary to the evidence and to the weight of the evidence.

4. The verdict is not supported by substantial or sufficient evidence.

5. The verdict is contrary to the instructions and charge of the Court.

6. The Court erred in its charge to the jury on the question of whether or not the government had proved interstate commerce in order to bring the charges in the Indictment within the purview of Section 28 U.S.C.A. 1951.

7. The Court erred in permitting the Government to introduce evidence of George T. Doherty, Andrew Hawthorne and August C. Duval to show plan, scheme and design when said evidence did not show plan, scheme and design.

8. The Court erred in permitting Government's counsel to introduce the testimony of George T. Doherty in rebuttal for the purpose of attempting to show plan, scheme and design when his Honor, Judge Herbert L. Sorg refused to permit a consolidation of the case of United States v. Nicholas A. Stirone at No. 14872 Criminal with this case which at the time of the trial of this case was pending and is still pending. The Government in requesting consolidation of the trial urged the very same reasons for consolidation as it did at the time of trial of the instant case. That the introduction of said evidence of George T. Doherty was highly prejudicial and did not prove plan, scheme or design but rather was introduced only to prejudice the case of the defendant by showing other unrelated crimes contrary to law.

9. The Court erred in permitting Government's counsel to introduce the testimony of Andrew Hawthorne for the purpose of attempting to show plan, scheme and design when his Honor, Judge Herbert L. Sorg refused to permit a consolidation of the case of United States v. Nicholas A. Stirone at No. 14773 Criminal with this case which at the time of the trial of this case was pending and is still pending, and further, the admission of said evidence was highly prejudicial for the reason that the said Indictment at No. 14773 charges a violation of 29 U.S. C. A. sec. 186. otherwise commonly known as the Taft-Hartley Law, and entirely dissimilar to the instant case which charged violation of the Hobbs Act.

10. That the Court, after erroneously permitting the Government to introduce the testimony of George T. Doherty and Andrew Hawthorne for the reasons stated in Paragraphs 8 and 9, erred in refusing defendant's counsel reasonable time to prepare a defense to the charges testified to by George T. Doherty and Andrew Hawthorne which charges are contained in separate indictments, and

in effect made the defendant defend three indictments when in a written notice dated May 1, 1957, from the United States Attorney's Office, defendant's counsel was advised that the case of United States v. Nicholas A. Stirone at 14871 Criminal would be called for trial on June 4th, and that he would be called upon only to meet the charges contained in that indictment.

11. The Court erred in permitting Government's counsel to introduce evidence of August C. Duval who testified that $1,000.00 in ten and one-hundred bills was sent to the defendant at the Waldorf-Astoria in New York City when his testimony had no probative value due to the fact that he testified he did not know for what reason said money was sent.

12. The Court erred in permitting Government's counsel to introduce testimony of George T. Doherty, Andrew Hawthorne and August C. Duval in rebuttal. The admission of this testimony was not proper because the rebuttal was not on a relevant or material matter but on a collateral matter.

13. The Court erred in permitting Government's counsel to inspect the minutes of Local 1058 International Hod Carriers' Building and Common Laborers' Union of America which were marked as an exhibit and placed in the custody of the Court while the Court decided whether or not to permit the introduction of said minutes as evidence. That before the Court made its ruling the Government's counsel took the books out of the custody of the Court and examined the books overnight. The Court did not make a ruling on the defendant's objection and the minutes were not introduced into evidence. Government's counsel obtained information from said minute books which was highly prejudicial to the defendant's case and thwarted his defense.

14. The Court improperly limited cross-examination of prosecuting witnesses, William G. Rider, Jeanne

Rider, George T. Doherty, Andrew Hawthorne and August C. Duval.

15. The Court erred in permitting Government's counsel to cross-examine defendant over defendant's counsel's objection on his 1937-1938 Income Tax Returns. The introduction of this testimony violated the defendant's constitutional rights as set forth in Amendments 4 and 5 of the United States Constitution as well as permitting Government's counsel to cross-examine defendant on a matter that was immaterial, irrelevant and collateral.

16. The Court erred in permitting defendant Stirone to be questioned on many irrelevant, immaterial and collateral matters concerning his activities as a labor leader.

17. The Court erred in permitting Government's counsel over objection by the defendant to interrogate the defendant on whether or not he had committed other crimes or conducted himself or gave orders which if true would amount to commission of other crimes.

18. The Court erred in permitting defendant to be cross-examined as to many of his private transactions which were irrelevant, immaterial and collateral and, therefore, highly prejudicial to the defendant.

19. The Court on many instances improperly curtailed the cross-examination by defendant's counsel of government witnesses to the prejudice of the defendant.

20. The Court erred in refusing defendant's counsel a recess in order to inspect and examine records of the Buncher Bros. Company for the purposes of contradicting the testimony of George T. Doherty to the effect that the Buncher brothers received thousands of dollars of non-ferrous metals. The refusal of this reasonable request was highly prejudicial to the defendant's case.

21. The Court erred in refusing defendant's counsel's request to introduce evidence through members of Local 178 House Wreckers and Scrap Yard Laborers' Union that certain scrap was surreptitiously shipped to Detroit, Michigan and to other scrap dealers by George T. Doherty when he testified in chief that all scrap material was sent to Buncher Brothers under a written agreement.

22. The Court erred in permitting Government's counsel to interrogate defendant's character witnesses concerning many rumors of extortion and other matters when the Government's counsel failed to prove such rumors.

23. The Government's counsel, in his closing address, made highly prejudicial remarks in calling the defendant, Nicholas A. Stirone, "Czar Nicholas" and various other names which were highly inflammatory, unwarranted and prejudicial.

24. The Government's counsel, in his closing argument, made highly prejudicial remarks concerning the defendant's 64 character witnesses. In effect he argued that the 64 character witnesses that were called on behalf of the defendant were bought off, afraid of physical violence and expected to curry favor by testifying for him. These remarks and innuendos were highly inflammatory, unwarranted, unfair and prejudicial.

25. The Court erred in refusing certain testimony offered by the defendant.

26. The Court erred in admitting certain evidence offered by the Government.

27. The Court erred in refusing to strike out the testimony of William G. Rider for the reason that his testimony did not support the charge in the Indictment and the Bill of Particulars.

28. The Court erred in refusing to strike out the

testimony of George T. Doherty for the reason that the said testimony was not proper rebuttal and if this testimony was relevant, competent and material it should have been introduced in the Government's case in chief.

29. The Court erred in not striking out the testimony of Andrew Hawthorne for the reason that his testimony was not proper rebuttal and for the further reason that his testimony was to the effect that no monies were extorted from him and any payments of money made to the defendant were voluntary.

30. The Court er-ed in its charge to the jury on the law as to plan, scheme and design.

31. The Court erred in its charge to the jury on the law of character testimony.

32. The Court improperly admitted the testimony of Jeanne Rider, a Government witness, concerning a conversation between said Jeanne Rider and her husband, William G. Rider. Said testimony was hearsay, irrelevant, immaterial and imcompetant.

3. The Government failed to prove the elements of the offenses charged.

34. Defendant's rights were violated by the issuance of subpoenaes on the part of the Government which required the witnesses to appear at the United States Attorney's Office and not in the District Court.

35. The Court erred in reading Paragraphs 4, 5 and 6 of the Indictment.

36. The Court erred in charging the jury as to fear, there being NO evidence of same or any evidence of which an inference could be drawn.

37. The Court erred in charging the jury that the defendant was an influential man in labor and an important figure in labor.

38. The Court erred in its instructions to the jury

relating to payments made because of fear, there being no evidence of same.

39. The Court erred in its charge to the jury that it was immaterial as to the influence of Stirone in regard to labor troubles.

40. The Court erred in not withdrawing a juror upon motion of defendant's counsel during the trial of the case.

41. The Government did not prove a violation of the Act of Congress.

The defendant reserves the right and respectfully requests leave to assert and file additional reasons for his Motion when the testimony and Court's charge in this case are transcribed.

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Attorneys for Defendant

ORDER OF COURT

AND NOW, this day of , 1957, on motion of defendant's counsel, it is hereby ordered and decreed that the defendant shall have thirty (30) days after the testimony and Judge's charge are transcribed to file additional reasons in support of his Motion for Judgment of Acquittal or a New Trial.

XII

ADDITIONAL REASONS FOR NEW TRIAL

AND NOW, August 21, 1957, comes Nicholas A. Stirone, defendant above-named, by his attorneys, and files the following additional reasons for new trial:

42. The Court erred in admitting the testimony of Doherty, Hawthorne and Duval.

43. The Court erred in not charging the jury as to the Statute of Limitations.

44. The general conduct of the trial on the part of the Government attorneys was unfair to the defendant.

45. The defendant was not afforded a trial according to due process.

46. The general atmosphere of the trial and the conduct thereof was prejudicial to defendant.

47. The Court erred in overruling defense counsel's objection to the testimony of witness Laffey with reference to defendant being on the list of creditors.

48. The Court erred in overruling defense counsel's objection to questions relating to support of wife and children.

49. The Court erred in overruling defense counsel's objection to questions relating to the commission of crimes of violence by force or strong-arm methods.

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Attorneys for Defendant

ADDITIONAL REASONS FOR NEW TRIAL

AND NOW, August 22, 1957, comes Nicholas A. Stirone, defendant above-named, by his attorneys, and files the following additional reasons for new trial:

50. The Court erred in allowing, over defense counsel's objections, improper questions on direct examination of the Government witness Moreschi, which questions related to irrelevant, incompetent and immaterial matters prejudicial to the defendant.

51. The Court erred in allowing, over defense counsel's objections, improper questions on direct examination of the Government witness Moreschi, which were beyond the scope of the Government's offer and prejudicial to the defendant.

52. The Court erred in sustaining the Government's objections to certain questions of the defense counsel on cross-examination of the Government witness Moreschi, and otherwise improperly restricting the cross-examination of Moreschi.

53. The Court erred in allowing, over defense counsel's objections, improper redirect examination of the Government witness Moreschi, which testimony was an attempt to impeach and contradict the testimony of said witness given on cross-examination.

Attorneys for Defendant

XIII

DEFENDANT'S AMENDMENT TO MOTION FOR NEW TRIAL

AND NOW, this 25th day of September, 1957, comes Nicholas A. Stirone, defendant above named, by his attorneys, and hereby files an amendment to his motion for new trial, and in support thereof assigns the following reason:

54. The distribution of a handbook containing instructions for the jurors in this case was prejudicial to the defendant. On September 24, 1957, counsel for the defendant learned that Genevieve Barr, Chief Deputy Clerk of the District Court, distributed and delivered to each juror on or about June 4, 1957 a pamphlet or handbook containing instructions for jurors. The said handbook contains numerous inaccuracies which prejudiced the right of the defendant to a fair trial. U.S. v. Gordon, 7th C.C.A. (Major, J), July 16, 1957.

Signed MARGIOTTI & CASEY

VINCENT M. CASEY

V. J. RICH

Attorneys for Defendent

XIV

STIPULATION

It is hereby stipulated and agreed by and between D. Malcolm Anderson, United States Attorney for the Western District of Pennsylvania, and Hubert I. Teitelbaum, First Assistant United States Attorney, attorneys for the government, and Vincent M. Casey, Esquire, and Veto J. Rich, Esquire, attorneys for defendant Nicholas A. Stirone, that the attached Handbook for Jurors is a copy of and similar to the handbook that was distributed to members of the panel from which the jury was selected in the above captioned matter by the Clerk of Courts; and that if Vincent M. Casey, Esquire, and Veto J. Rich, Esquire, should be called upon to give testimony in this matter they would testify that they first learned that copies of the attached handbook were distributed to this jury panel on September 24, 1957.

D. Malcolm Anderson
United States Attorney

Hubert I. Teitelbaum
First Assistant U. S. Attorney
Attorneys for Plaintiff

Vincent M. Casey

Veto J. Rich
Attorneys for Defendant

Date Nov. 12, 1957

Indictment No.-14872

XV

IN THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
vs.
NICHOLAS A. STIRONE
} NO. 14872 CRIMINAL

THE GRAND JURY CHARGES:

1. That at all times hereinafter mentioned a part of the interstate commerce of the United States has consisted of the transportation between the several states of men, materials and supplies for use in the demolition of a building and the transportation between the several states of the scrap steel, iron, brass, copper, lead, zinc and other metals obtained from the demolition of said building.

2. That at all times hereinafter mentioned, the Doherty Lumber and Wrecking Company was a party to certain contracts to demolish a certain building known as the Carnegie Building, in Pittsburgh, Pennsylvania, and to sell the scrap iron, steel, brass, copper, lead, zinc, and other metals obtained from said demolished building for transportation between the various states of the United States and for subsequent use in the manufacturing of products to be transported between the various states of the United States, and more particularly, from the State of Pennsylvania to various other states; and at said times, Doherty Lumber and Wrecking Company was engaged in an industry affecting commerce between the states of the United States.

3. That in the performance of its contracts as set forth in paragraph two, Doherty Lumber and Wrecking

Company caused the transportation of men, supplies, material, and machinery in interstate commerce from various points in the United States into the State of Pennsylvania and to various points outside the State of Pennsylvania from the State of Pennsylvania.

4. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor; President of the Heavy Engineering, Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor and was a representative of employees of the Doherty Lumber and Wrecking Company.

5. That at all times hereinafter mentioned, George T. Doherty was President of the Doherty Lumber and Wrecking Company.

6. That commencing on or about March 1, 1952, the exact date being to the Grand Jurors unknown, and continuing thereafter up to on or about Febraury 28, 1953, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully and unlawfully obstruct, delay and affect interstate commerce between the several states of the United States and the movement of men, materials and supplies in such commerce, by extortion, to wit, by obtaining property in the form of money and other things of value in an amount in excess of $10,000.00, the exact sum being to the Grand Jurors unknown, from persons acting for

and on behalf of the Doherty Lumber and Wrecking Company, induced by the wrongful use of threats of labor dispute, obstruction of the performance of the contracts referred to in paragraph two, fear, and by use of actual and threatened force and violence.

7. Defendant threatened and caused to be committed acts of violence to the property of the Doherty Lumber and Wrecking Company.

8. Defendant caused George T. Doherty to fear that the performance of the contracts referred to in paragraph two would be delayed and that the Doherty Lumber and Wrecking Company would suffer financial loss in performance of said contracts and that officers, agents and property of said company would be injured and damaged if defendant did not obtain property as stated in paragraph six.

9. Defendant Nicholas A. Stirone threatened the said George T. Doherty, President of the Doherty Lumber and Wrecking Company, that defendant would, in his capacity as a labor representative, wrongfully and corruptly embark upon a course of oppressive action against the Doherty Lumber and Wrecking Company by calling strikes, labor disputes, work stoppage, and difficulties in connection with the said demolition work, and other labor troubles, under various pretexts and claims of right, under the guise of representing various labor organizations and their members.

Contrary to the terms and provisions of Section 1951, Title 18, United States Code.

A True Bill

Foreman

D. Malcolm Anderson
United States Attorney

XVI

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA v. NICHOLAS A. STIRONE	NO. 14873 CRIMINAL (29 U. S. C. Section 186)

THE GRAND JURY CHARGES

1. That at all times hereinafter mentioned, a part of the interstate commerce of the United States has consisted of the transportation of scrap iron, steel, copper, brass, lead, zinc and other metals and the products manufactured from said metals between the various states of the United States; and that a further part of said commerce has consisted of the construction of highways and bridges which are a facility of commerce and transportation between the several states of the United States.

2. At all times hereinafter mentioned, Robert Hawthorne, Inc., was a party to several contracts for the demolition of several buildings in the City of Pittsburgh, Pennsylvania, and the sale of scrap iron, steel, brass, lead, zinc, copper and other metals from said buildings, which metals were sold and transported from Pennsylvania to various other states.

3. That at times hereinafter mentioned, Robert Hawthorne, Inc., was a party to contracts calling for demolition of buildings so as to enable the construction of highways and bridges which are facilities of commerce and transportation between the several states of the United States.

4. That at times hereinafter referred to Andrew Hawthorne and August Duval were officers, agents or employees of the said Robert Hawthorne, Inc.

5. That as a result of the performance of contracts referred to in paragraphs two and three, Robert Hawthorne, Inc. caused and brought about the demolition of certain buildings in Pittsburgh, Pennsylvania, to enable the construction of bridges and highways which will serve and be a facility of interstate commerce and as a result of said demolitions, scrap iron, steel, brass, copper, lead, zinc and other metals were sold and transported in various states of the United States and were used in the manufacture of metal products which were sold and transported in various states of the United States and from Pennsylvania to various other states; and is engaged in an industry affecting commerce between the several states.

6. That at all times hereinafter referred to, Nicholas A. Stirone was President of Local No. 1058, International Hod Carriers, Building and Common Laborers Union of America, affiliated with the American Federation of Labor; President of the Heavy Engineering, Railroad Contracting and Highway Construction Council, American Federation of Labor, which council is composed of the United Brotherhood of Carpenters and Joiners of America, International Union of Operating Engineers, International Hod Carriers, Building and Common Laborers Union of America and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and President of the Laborers District Council of Western Pennsylvania, American Federation of Labor, and was a representative of employees of Robert Hawthorne, Inc.

7. That commencing on or about March 1, 1952, the exact date being to the Grand Jurours unknown, and continuing thereafter until on or about July 8, 1953,

in the Western District of Pennsylvania and within the jurisdiction of this Court, defendant Nicholas A. Stirone, well knowing all matters of fact aforesaid, did knowingly, wilfully and unlawfully accept and receive, and agree to accept and receive, from Robert Hawthorne, Inc., acting through its officers, agents or employees, Andrew Hawthorne and August Duval, money or other property of value in a sum in excess of $4,000.00.

Contrary to the terms and provisions of Section 186, Title 29, United States Code.

A True Bill

Foreman

D. Malcolm Anderson
United States Attorney

XVII

JUDGMENT AND COMMITMENT

On this 12th day of December, 1957 came the attorney for the government and the defendant appeared in person and by counsel (Vincent Casey, Esq., and Veto Rich,)

It Is **Adjudged** that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of Ct. 1: Knowingly obstructing interstate commerce and movement of materials and supplies therein by extortion as charged in one (1) Count and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is **Adjudged** that the defendant is guilty as charged and convited.

It Is **Adjudged** that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) years, and is directed to pay a fine of Five Thousand ($5,000.00) Dollars, and cost of prosecution.

It Is **Adjudged** that

It Is **Ordered** that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

John L. Miller /s/

United States District Judge.

The Court recommends commitment to:

James H. Wallace, Jr., /s/

Clerk.

[fol. 527]

IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

v.

NICHOLAS A. STIRONE, Appellant.

Appeal From the United States District Court for the Western District of Pennsylvania

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Argued September 18, 1958
Before Goodrich, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed December 9, 1958

By GOODRICH, Circuit Judge.

This is an appeal from a judgment of conviction rendered in the Western District of Pennsylvania in a prosecution under the Hobbs Act, 18 U.S.C. § 1951. That statute penalizes anyone who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion . . ."[1] Extortion is defined as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear . . ."[2]

The verdict of the jury came following a long, hard fought trial. Defendant, in this appeal, raises many questions [fol. 528] which he claims were incorrectly decided by the district court whose careful and thorough opinion may be found in —— F. Supp. —— (W.D.Pa. 1957).

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[1] 18 U.S.C. § 1951(a) (1951).

[2] 18 U.S.C. § 1951(b)(2) (1951).

Defendant, a labor union official, was alleged to have extorted money from a man named William G. Rider who was in the business of supplying ready-mixed concrete. The Government's version of the facts, accepted by the jury, was that the defendant had come to Rider, following Rider's entering into a profitable contract to supply mixed concrete for the construction of a steel mill in Allenport, Pennsylvania, and that he had threatened Rider with the loss of that contract if he did not give the defendant fifty cents a cubic yard for all concrete furnished for this job. The sufficiency of this recital to justify conviction under the statute will be considered later. Defendant's first contention is that interstate commerce was in no way affected by his actions.

I. INTERSTATE COMMERCE

The interstate commerce question is simpler than the defendant's argument would have it appear. In making this ready-mixed concrete Rider bought sand which was pumped out of the Ohio River in Ohio, West Virginia or both. The Duquesne Sand Company, which pumped the sand from the river, sold it to Duquesne Slag Products Company. It was on Slag Products Company's land that Rider's operations for the contract mentioned were being carried on. It is sufficient to point out, to settle this part of the case, that some of the barges of sand were brought into Pennsylvania, consigned to Rider and unloaded by him at the place where his work was being carried on. This sand came from outside Pennsylvania. Whether it was consigned directly to Rider or was consigned to Duquesne Slag but delivered to Rider does not matter. There was interstate commerce in the process.

It is not necessary that this should have been the progress of all the sand; it is enough that there was evidence that [fol. 529] a considerable quantity was sent to Rider in this way. We do not need to worry ourselves with the problem of material having come to rest from an interstate commerce journey and then having something else done to it after it has reached its destination. The facts, as to some of this sand at any rate, are as clear as if a Philadelphia baking concern, through a broker, ordered flour to be shipped from Minneapolis to him at Philadelphia. *Hulahan v. United States*, 214 F.2d 441 (8th Cir. 1954), is in point here; likewise its predecessor, *Nick v. United States*, 122 F.2d 660 (8th Cir. 1941). See *NLRB v. International Rice Milling Co., Inc.*, 341 U.S. 665 (1951).

So far, so good; interstate commerce was involved in the delivery of this sand to Rider and if such commerce was affected by extortion on the part of the defendant there is an offense committed under the Hobbs Act.

There is another phase of the interstate commerce point, however, which presents more difficulty. The second paragraph of the indictment charged that Rider was a party to a contract "for the erection of a steel processing plant at Allenport, Pennsylvania, and, for the purpose of performing said contract, caused supplies and materials to move in interstate commerce between various points in the United States and the site of his plant for the manufacture of the mixing of ready mixed concrete. . . ." The connection of this charge with the facts shown about the shipment of the sand has already been discussed.

During the course of the trial a witness from the steel company whose plant was being built at Allenport gave evidence that when the steel mill was completed it would ship much of its product out of the state of Pennsylvania, notably to Michigan and Kentucky. The court, in its charge, told the jury that if it was satisfied "that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce" and if they believed the defendant extorted money from Mr. Rider they were instructed "as a matter [fol. 530] of law that there has been a substantial effect on interstate commerce shown by the United States."

There are two questions raised by this. The first has to do with whether the indictment covers this phase of the alleged crime and whether, if not, there is a fatal variance between indictment and proof. As said above, the indictment charged interference with interstate commerce on the receiving, not the sending end, except by stating that the sand was for a steel mill.

If there was a variance, no harm was done by it and it is not a source of reversible error. The defendant was not surprised; the testimony about the destination of the product of the mill was objected to, but counsel's argument against it was directed to the substantive law concerning the scope of interstate commerce. The record discloses that counsel was prepared for the introduction of the testimony rather than surprised by it. It is now too late to raise the point. See the discussion in *Berger* v. *United States*, 295 U.S. 78 (1935).

The second question under this head is the correctness of the charge as a matter of substantive law. Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense? It is to be noted that the language used in the statute is very broad, seemingly intended to cover all that federal legislation can cover in this regard.[3]

We find a helpful authority in *Mitchell* v. *Vollmer & Co., Inc.*, 349 U.S. 427 (1955). There employees engaged in construction of a lock which, when completed, was to be part of the Gulf Intercoastal Waterway, were held to be engaged in commerce within the meaning of the Fair Labor Standards Act. While the lock, when done, was to become an instrumentality of commerce, while it was in the process [fol. 531] of construction it was as much in the preparatory stage as the steel mill here. And in *Reed* v. *Pennsylvania Railroad Co.*, 351 U.S. 502 (1956), the Supreme Court, reversing our decision in 227 F.2d 810, held that the Federal Employers' Liability Act applied to an office worker whose duties were to file tracings of the company's rolling stock, equipment and structures. The *Vollmer* decision was held by the Fifth Circuit last year to include within "interstate commerce" the building of a causeway over which interstate traffic would flow when it was completed. *Archer* v. *Brown & Root, Inc.*, 241 F.2d 663 (1957). The decision also brought within "interstate commerce" the production of material for the causeway construction and the construction of a plant which when completed would produce materials to be used in the causeway construction. The only difference between this last aspect of the *Archer* case, supra, and the case at bar is that in the case at bar the plant, when completed, will produce materials which themselves will move in interstate commerce, whereas the material to be produced by the plant in *Archer* would be used for further construction. On principle the cases are indistinguishable.

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[3] See 18 U.S.C. § 1951(b)(3) (1951). "The term 'commerce' means . . . and all other commerce over which the United States has jurisdiction."

The court in *Archer* declined to state whether it thought that *Vollmer* had swept away all the prior learning on the question of what touched or concerned interstate commerce sufficiently to be made the subject of federal regulation. See also *Mitchell* v. *Hodges Contracting Co.*, 238 F.2d 380 (5th Cir. 1956). Nor do we here. It is sufficient that we think to apply the federal regulation to the case in hand is within current authorities.[4]

[fol. 532]

II. Sufficiency of the Evidence

We now turn to the defendant's contention that the evidence was insufficient to sustain a conviction. This point we can dispose of very quickly. The testimony of Rider and Mrs. Rider, if believed, is sufficient to support a finding that Rider was forced to pay this money to Stirone through fear of economic loss to his profitable business with the company constructing the steel mill. It is true that argument could be made to the contrary. But the argument to the contrary was made to the jury. Indeed, defendant denied that he was at the place where Rider said he was on the day of the alleged conversation and denied that the conversation ever took place. All this, however, is settled by the finding of the jury and that finding is amply supported in the testimony. Reasonable fear of economic loss is enough to come within the statute. *Bianchi* v. *United States*, 219 F.2d 182, 194 (8th Cir. 1955).

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[4] In Mitchell v. Hodges Contracting Co., 238 F.2d 380 (1956), the Fifth Circuit brought within the ambit of the Fair Labor Standards Act employees engaged in the construction of a new radio-television building for a local newspaper. Although television was a new enterprise for the newspaper, it previously had operated a radio station. The court, in applying the Fair Labor Standards Act to the construction, stated that the prior existence of the radio station removed it from "any status of naked 'new' construction for an activity not yet in being." 238 F.2d at 384. See also United States v. Newjer Contracting Co., 161 F. Supp. 867 (D. N.J. 1958), in which the court held that employees of a construction company engaged in construction work on a super highway which when completed would facilitate the flow of traffic to other states were within the Fair Labor Standards Act.

III. EVIDENCE OF SIMILAR OFFENSES

The prosecution, over objection, was permitted in rebuttal to introduce testimony of similar offenses by the defendant. These extortions, or coerced payments of money, if they took place, occurred following the incident of which Rider complains. This testimony had been offered in the Government's case in chief but the trial judge refused it. Later it was received as showing intent, scheme, plan or design.

The question of the admissibility of evidence of offenses other than the one for which the defendant is on trial is a very difficult one. Contradictory statements abound in the decisions and the judicial crop has been subjected to severe criticism by writers of law review articles.[5] The difficulty [fol. 533] is one which is inherent in the nature of the problem.[6] Anyone obligated to determine the guilt or innocence of a defendant charged with a particular crime invariably would be influenced by a showing that the defendant commits crimes in general. Certainly it is probative to prove that a defendant in a criminal case is a man who commits crimes. This showing is strengthened by evidence that he has committed other crimes similar to the one with which he is now charged. The trouble is that while such evidence is probative it is highly prejudicial and a court or jury may find itself determining in general whether the defendant is a bad man rather than whether he committed a particular crime.

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[5] The following articles contain a careful consideration of the problems in this area. Stone, *The Rule of Exclusion of Similar Fact Evidence: England*, 46 Harv. L. Rev. 954 (1933); Stone, *The Rule of Exclusion of Similar Fact Evidence: America*, 51 Harv. L. Rev. 988 (1938).

[6] "It is hopeless to attempt to reconcile the precedents under the various heads; for too much depends on the tendency of the Court in dealing with a flexible principle." 2 Wigmore, Evidence § 302 at 201 (3d ed. 1940).

So, the general rule, as stated by most courts, is that evidence of other offenses is inadmissible in a criminal prosecution for a particular crime. This rule is qualified by a number of exceptions[7] stated in terms of the capacity of the evidence to prove some specific fact or issue such as intent, plan, scheme or design. *E.g.*, *United States* v. *Klass*, 166 F.2d 373, 377 (3d Cir. 1948); *United States* v. *Bradley*, 152 F.2d 425 (3d Cir. 1945). But since the range of relevancy, other than for the purpose of showing criminal propensity, is almost infinite,[8] we think the rule may be phrased a little less mechanically. Evidence of other offenses may be received if relevant for any purpose other than to show a mere propensity or disposition on the part of the defendant to commit the crime.[9]

[fol. 534] Of course the trial judge may, in the exercise of his sound discretion, exclude evidence which is logically relevant to an issue other than propensity, if he finds that the probative value of such evidence is substantially outweighed by the risk that its admission will create a substantial danger of undue prejudice. *United States* v. *Feldman*, 136 F.2d 394, 399 (2d Cir. 1943); *United States* v. *Shurtleff*, 43 F.2d 944, 947-48 (2d Cir. 1930). See Uniform

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[7] McCormick, Evidence § 127 at 328-31 (1954). See Note, 29 Mich. L. Rev. 473. (1931).

[8] *Id.* at 327.

[9] Even this general statement must be qualified in prosecutions for sex offenses. A number of jurisdictions admit evidence of other similar offenses where offered to prove propensity for illicit sexual relations with a particular person. *E.g.*, Hodge v. United States, 126 F.2d 849 (D.C. Cir. 1942) (incest); State v. Terry, 199 Iowa 1221, 203 N.W. 232 (1925), (incest); Sykes v. State, 112 Tenn. 572, 82 S.W. 185 (1904) (statutory rape). An extensive annotation on the subject is contained in 167 A.L.R. 565. A few decisions have admitted evidence of sex crimes with persons other than the particular person involved in the crime on trial. Compare Fairbanks v. United States, 226 F.2d 251 (D.C. Cir. 1955), with Commonwealth v. Kline, 361 Pa. 434, 65 A.2d 348 (1949).

Rules of Evidence 55, 45; Model Code of Evidence Rule 303 (1942). But it must be borne in mind that the greater the probative force of the evidence, the more likely it is to be prejudicial to the party against whom it is offered.

In this case we think that there was no abuse of discretion in receiving the testimony. Rider testified that the defendant had interviewed him at his place of business on a certain date and that the defendant had threatened him with labor trouble if he did not make payments to the defendant. Stirone denied this meeting at the time and place specified but he admitted having collected money from Rider which he said was a fair and legitimate commission for services rendered in securing for Rider a profitable contract. The defendant argues that if Rider's testimony is believed the nature of the relationship between the defendant and Rider was proved and this other evidence was unnecessary. But the question before the jury was whether Rider's story was to be believed or not, the defendant having vehemently denied it. The evidence in question was, therefore, relevant to explain Stirone's purpose or intent in soliciting money from Rider. See *United States v. Blount*, 229 F.2d 669, 671-72 (2d Cir. 1956); *United States v. Wall*, 225 F.2d 905 (7th Cir. 1955).

The trial judge limited this evidence very strictly. He cautioned the jury "that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment." He told the jurors that before they could [fol. 535] consider this testimony they must first find "that the other evidence in the case, standing alone, establishes beyond a reasonable doubt the accused did the particular acts charged in the indictment." Then he limited consideration of the testimony to showing intent, plan or scheme.

If the limitations given to the jury by the trial judge were more strict than he was required by law to make, that is, clearly, not a matter of which the defendant can complain.

IV. PREJUDICIAL MISCONDUCT AT THE TRIAL

The defendant complains of prejudice engendered at the trial by the prosecuting attorney. We do not find such prejudice. It was a very vigorously contested case. Lawyers for both sides "clash'd on their sounding shields the din of war."[10] Each side made charges against the witnesses for the other side. There was a suggestion that the prosecuting attorney injected his personal belief of the defendant's guilt into his argument. There is some talk which would perhaps support this contention. If there is any point to this, it was not timely made and so it does not need to be considered. We, of course, agree that the lawyer's own view as to the probity of witnesses or the soundness of a case is not something to be argued to the trier of the fact. We doubt, too, whether invectives thrown at witnesses for an opponent or at the lawyer for an opponent assist a jury to decide a case. But as we read through the record here we do not think that prejudicial error was committed although each counsel no doubt exasperated the other very much. The trial judge held the contestants in check calmly and his charge was a model of fairness. We think there is nothing to complain of in this department. As Judge Hand pointed out a number of years ago, *DiCarlo v. United States*, 6 F.2d 364, 368 (2d Cir. 1925), the prosecuting attorney may not be shorn "of all oratorical emphasis."

[fol. 536] There is mention in the brief, though not an oral argument, of a complaint based on the circulation of a pamphlet for jurors. As pointed out by the trial judge, this objection was not timely made and need not be considered. There is, likewise, a complaint about the use of subpoenas by the Government. We find this trivial.

The judgment of the district court will be affirmed.

HASTIE, Circuit Judge, dissenting.

One of the principal questions in this case is whether the court below erred in charging the jury as follows:

> "Or if you are satisfied beyond a reasonable doubt that Mr. Rider's concrete was used for constructing a mill which would manufacture articles of steel to be shipped in interstate commerce and if you also believe

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[10] Milton, Paradise Lost, Bk. I, l. 668.

> that the defendant extorted money from Mr. Rider, you are instructed as a matter of law that there has been a substantial effect on interstate commerce shown by the United States. In other words, if you find the facts to be as the Government contends, interstate commerce has been affected, obstructed and delayed."

Stating the issue thus raised this court asks:

> "Is an interference with a man who is furnishing material for a mill which, when completed, will manufacture products which, if successfully marketed, will be shipped out of the state close enough to interstate commerce to be made a federal offense?"

To this question the majority give an affirmative answer. I regret that I am unable to concur.

It is recognized and agreed that the Hobbs Act, 18 U.S.C. § 1951, and the present indictment founded on that statute do not purport to make an extortionate demand upon a business proprietor a federal crime except upon a clear [fol. 537] showing that such interference with the business in question actually "obstructs, delays or affects" interstate commerce or the movement of some article in such commerce. *Cf. United States* v. *Employing Plasterers' Assn.*, 1954, 347 U.S. 186.

In some situations the business against which an extortionate demand has been made can be shown to be a part of or intimately related to interstate commerce so that any disruption of that business necessarily has significant effect upon commerce. Thus, and most obviously, if the business directly affected by an extortionate demand is interstate transportation the wrong is within the Act. *E.g. United States* v. *Kemble*, 3d Cir., 1952, 198 F.2d 889. Again, if extortion is directed against a proprietor engaged in providing, operating or otherwise working upon something so closely related to functioning interstate commerce as to merit characterization as a facility or instrumentality of such commerce, this in itself may be enough to bring extortion hampering that enterprise within the statute. *Cf. Mitchell* v. *Vollmer & Co.*, 1955, 349 U.S. 427; *Oversheet* v.

North Shore Corp., 1943, 318 U.S. 125; *Archer* v. *Brown & Root Inc.*, 5th Cir., 241 F.2d 663.

But here the only commerce said to be affected is the prospective distribution of goods to be produced by a factory about to be constructed. I think it would be an unwarranted extension of the concept of wrongful conduct affecting interstate commerce to embrace this interference with the supplying of building material for a structure which will house an activity which will eventually create some new commerce. In other circumstances it has been thought essential to federal jurisdiction under the commerce clause that the regulated conduct be related to some existing commerce, and not solely to commerce contemplated or planned to have its beginning in the future. This view is exemplified and strongly supported by the cases, of which our own decision in *Kelly* v. *Ford, Bacon & Davis, Inc.*, 1947, 162 F.2d 555, is an often cited leader, refusing [fol. 538] to extend the Fair Labor Standards Act conception of activity affecting the production of goods for commerce to the construction of new plants intended solely for the future production of goods for interstate distribution. The vitality of this concept is attested by *Murphy* v. *Reed*, 1948, 335 U.S. 865, and a comment on that decision in *Mitchell* v. *Vollmer & Co. supra*, at 430 n. 2. It seems to me that the special aversion of the criminal law for speculative conclusions in the chain of proof of guilt makes this limitation even more appropriate, indeed essential, in applying the Hobbs Act.

In addition to this difficulty of affecting commerce not yet begun, the present case presents a second speculative factor. The extortionate threat was made against a local supplier of mixed concrete. It is entirely speculative whether or not preventing this single materialman from furnishing mixed concrete on the construction job he was serving would have affected even future interstate commerce. Was concrete in abundant or short supply? Were there other materialmen ready and anxious to supply without delay the concrete needed for the job? The record tells us nothing. But without some proof that the loss of this supplier would in fact have some delaying effect on the eventual productivity of the mill, any suggested ultimate effect even on interstate commerce several steps removed is speculative to an extreme degree. *Cf. United States v. Starlite Drive-In, Inc.*, 7th Cir. 1953, 204 F.2d 419. Indeed, I understand the authoritative rule to be that where the conduct in question is an interference with a distinct solely local business, there must be a substantial resultant demonstrable effect, the very antithesis of a speculative effect, upon interstate commerce to justify federal intervention under the commerce power. *Manderville Island Farms, Inc. v. American Crystal Sugar Co.*, 1948, 334 U.S. 219; *Wickard v. Filburn*, 1942, 317 U.S. 111; *United States v. Wrightwood Dairy Co.*, 1942, 315 U.S. 110. It is true that "[i]f it is [fol. 539] interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." See *United States v. Women's Sportswear Mfgrs. Assn.*, 1949, 336 U.S. 460, 464. But this figure of speech carries with it the idea that the "squeeze" must be real and the "pinch" uncomfortably perceptible.

On the present record no more can be said than that what was done to an entirely local business might conceivably have future impact on commerce. Most certainly not even a likelihood of actual impact upon interstate commerce can properly be said to have been proved beyond reasonable doubt. Yet that at least was the burden the government undertook to bear in this criminal case.

Finally, it should be considered and kept in mind that the control and punishment of local extortion is primarily the business of local or state government. The Hobbs Act is an auxiliary and partially duplicating federal superimposition on state law enforcement. In the view of Congress this is a desirable measure of federal assistance to the states in the exercise of their police power. But where state power and responsibility are thus primary and the national government is merely performing an auxiliary function, we should not be eager to stretch federal jurisdiction to cover doubtful cases offering only a tenuous or speculative theory of federal jurisdiction. See *Schwartz, Federal Criminal Jurisdiction and Prosecutors' Discretion*, 1948, 13 Law and Contemporary Problems, 64, 70. We should insist that federal jurisdiction be clear before imposing federal sanctions in an area of primarily local concern. Federal jurisdiction is certainly far from clear in the circumstances we are now considering.

What has been said in this dissenting opinion concerns only one of the two bases upon which the jury could have found the essential effect upon interstate commerce under the court's charge. We cannot know upon which theory the jury proceeded in finding the accused guilty. Therefore, I [fol. 540] would send this case back to the district court for a new trial at which the erroneous theory of involvement of interstate commerce would be eliminated.

[fol. 541]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

vs.

NICHOLAS A. STIRONE, Appellant.

On Appeal From the United States District Court for the Western District of Pennsylvania

Present: Goodrich, Staley and Hastie, Circuit Judges.

JUDGMENT—December 9, 1958

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

December 9, 1958

[File endorsement omitted]

[fol. 542] [File endorsement omitted]

[fol. 543]

IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MOTION FOR EXTENSION UNTIL JANUARY 9, 1959 OF TIME WITHIN WHICH PETITION FOR REHEARING MAY BE FILED —Filed December 12, 1958

This 12th day of December, 1958 appellant, by his counsel, Michael von Moschzisker, Esq., asks the Court to extend until January 9, 1959 the time within which he may file a Petition for Rehearing in the above case, and assigns in support of his request the following:

1. The Opinion and Order of the Court were filed December 9, 1958. Circuit Judge Goodrich wrote the Opinion for himself and Circuit Judge Staley. Circuit Judge Hastie wrote a dissenting Opinion.

2. In the opinion of counsel for appellant, ~~Judge~~ Goodrich's Opinion shows that counsel did not succeed in communicating to the Court a proper understanding of appellant's complaint with regard to various rulings by the trial judge.

3. The questions of law involved included Constitutional problems which counsel ~~believe it~~ is their duty to place before the Court in a short brief expressing appellant's position differently than it was expressed at the time of oral argument and in the brief filed before oral argument.

[fol. 544] 4. Counsel is engaged in the preparation of other briefs in appellate courts, the deadlines for which are approaching.

5. Counsel certifies that he has this day mailed one copy of this petition to Hubert I. Teitelbaum, United States Attorney, Pittsburgh, Pennsylvania.

Michael von Moschzisker, Attorney for Appellant.

[fol. 545]

IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

Present: Goodrich, Staley and Hastie, Circuit Judges.

ORDER EXTENDING TIME TO FILE PETITION FOR REHEARING— December 15, 1958.

Upon consideration of the motion by appellant,

It is Ordered that the time for filing a petition for rehearing in the above-entitled case be, and it is hereby extended to January 9, 1959.

By the Court, Goodrich, Circuit Judge.

December 15, 1958

[File endorsement omitted]

[fol. 546]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

[File endorsement omitted]

[fol. 547]

PETITION FOR REHEARING—Filed January 5, 1959

On December 9, 1958 this Court (per Circuit Judges Goodrich and Staley in an Opinion by the former) entered judgment in this case, affirming the judgment below. Circuit Judge Hastie dissented. Appellant requests the Court to grant him a rehearing for the reasons set forth herein.[1]

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[1] This Court extended to January 9, 1959 the time within which this petition might be filed.

[fol. 548]

REASONS FOR GRANTING REHEARING

1. The Fatal Variance

This was a prosecution under the Hobbs Act, 18 U. S. C. A. 1951.

Sand had been brought from other states to Pennsylvania where it was used to make concrete for a Pennsylvania steel mill which would manufacture articles of steel to be sent out into interstate commerce. As the Opinion of the Court concedes at page 4, the indictment charged interference with interstate commerce on the receiving end of the sand rather than interference with the sending of the steel products from the steel mill into interstate commerce.

However, the trial judge instructed the jury that the necessary interference with interstate commerce could be found *either* on the basis of interference with receipt of the sand or on the basis of interference with the eventual sending out of steel products (287a, 288a.)[2]

Appellant's 55-page brief in this Court (page 15) devoted only one short paragraph to the argument that an indictment for obstructing the receipt of sand in interstate commerce could not support a conviction for having obstructed the sending of steel products into interstate commerce.

In the Opinion of this Court affirming the judgment, Judge Goodrich dismisses this problem by saying that if there was a variance, it was harmless (page 4).

The difficulty may be that Judge Goodrich thought of this as a trial for extortion from an employer engaged in an industry affecting interstate commerce. But that is not [fol. 549] what the Hobbs Act prohibits. The Hobbs Act prohibits the obstruction of interstate commerce by means of extortion. The obstruction of commerce is the very essence of the offense. We say that the obstruction which was charged had to be proved. On the other hand, if the essence of the offense had been extortion from an employer engaged in an industry affecting interstate commerce, a variance as to the way in which the industry affected commerce might well not be a fatal variance.

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[2] This was excepted to at 300a. The Opinion of the Court says evidence of obstruction at the sending end was not objected to on the grounds raised herein. But an objection on the ground of immateriality was made (51a-53a.) We submit that a failure to object to immaterial evidence would not waive the right to have the case properly submitted to the jury anyway.

The dissenting Opinion of Judge Hastie does not discuss the problem. He dissented on the ground that there had not been a clear showing that the actual sending out of any steel products into interstate commerce had been interfered with and, therefore, there had not been sufficient evidence to take the case to the jury on a theory of such interference.

As a matter of fact, the issue is more grave than that. A Constitutional question is involved, as we shall demonstrate below.

Counsel has not previously succeeded in communicating the true nature of this question to this Court, and it is apparent from the Opinion of the Court that the Court itself has not yet passed on the question after considering it in its proper light.

The Hobbs Act provides (18 U. S. C. A. 1951):

> "Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

[fol. 550] Obviously the essence of the offense is obstruction of interstate commerce by extortion.[3]

Since the Fifth Amendment provides that you can only be tried for an infamous crime after having been indicted for it, and that there must be due process, which includes notice of the charge, defendant could not constitutionally be tried for any obstruction of interstate commerce other than that charged in the indictment. *DeJonge* v. *Oregon*, 299 U. S. 353, 362, 57 S. Ct. 255. See *Cole* v. *Arkansas*, 333 U. S. 196, 201, 68 S. Ct. 514.

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[3] Cf. Taft-Hartley Act 29 U.S.C.A. 186(b). The essence of the offense proscribed by the Taft-Hartley Act is receiving money from an employer in an industry affecting commerce. Obstruction of commerce is not required by the Taft-Hartley Act. It is required under the Hobbs Act.

In the present case, as the Opinion of this Court concedes at page 4, the only obstruction of interstate commerce charged by the indictment was obstruction of sand at the receiving end.

It appears to us that it was unconstitutional to submit to the jury an alternative basis for conviction on the theory that instead of obstructing the receiving of sand which had come in interstate commerce, defendant had obstructed the sending out into interstate commerce of steel products manufactured in a mill constructed out of concrete into which the sand had gone.

Neither "obstruction" includes the other and the two were vastly different.

The Opinion of this Court at page 4 dismisses the problem as having involved a mere "variance," and says the variance was harmless.

Of course, every time a man is indicted for one offense and convicted of an offense somewhat different, there has been a "variance." Some variances are unconstitutional. Others are not even unlawful. The question in the present case is which kind of a variance this was rather than whether it was a mere variance.

[fol. 551] The Supreme Court laid down the law in *Berger* v. *U. S.*, 295 U. S. 78, 82, 55 S. Ct. 629 as follows:

> "The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to 'affect the substantial rights' of the accused. The general rule that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense."

If either of the two requirements of the Berger case have not been met, conviction in the present case cannot stand.

First, we inquire whether the variance was such as to deprive defendant of his protection against another prosecution for the offense of having obstructed the sending out of the steel products into interstate commerce. It certainly would not. As this Court said at page 130 of *U. S.* v. *Kenny,* 236 F. 2d 128:

> "Where the state charges an accused with two related offenses, an acquittal of one precludes subsequent prosecution on the other, if that acquittal was the result of decision in favor of the defendant on an issue which would be essential to the case against him on the second charge."

If Stirone had been acquitted, it would have been impossible to say whether or not the acquittal resulted from a decision in his favor on the issue of whether he obstructed the shipment of the steel products.[4] The verdict would [fol. 552] have been not guilty as charged. That kind of obstruction was not charged in the indictment.

Second, we say that the other requirement of the Berger case has not been met, i.e. the requirement that the accused be definitely informed as to the charges against him, so that he may present his defense and not be taken by surprise.

Where a name is misspelled in an indictment, or where an incorrect dollar amount is cited for the value of stolen property, a variance between allegata and probata does not mean the defendant has not been sufficiently informed as to the charges against him. But the present case is different. In the present case, defendant was charged with obstructing the receipt of sand in interstate commerce and was convicted of obstructing the shipment of steel products in interstate commerce. This was not a case where the obstruction was proved to have been done in a slightly different way from that charged. Here an altogether different obstruction was shown.

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[4] On the other hand, it cannot be said that Stirone's conviction was based on an obstruction of the shipment of steel products. It may have been based on the alternative theory of the obstruction of receipt of sand. Since the two offenses involved different factual elements, the conviction of one offense would not bar trial for the other offense. The cases so holding are legion. One is *U. S.* v. *One Dodge Sedan*, 113 F. 2d 552.

The Opinion of this Court says at page 4 that the record discloses that counsel was prepared for the introduction of the testimony that the shipment of steel had been obstructed, rather than surprised by it. We know of no such portion of the record and we note that no defense was made to the charge that the flow of steel products into interstate commerce had been dammed up.

Accordingly, both tests laid down in the Berger Case must be resolved in Stirone's favor and the conviction should not be permitted to stand.

2. The Proof of Other Offenses

As pages 21-23 of the Brief for Appellant in this Court explain, the trial judge over-ruled defendant's repeated objections to the reception of evidence that on two occasions in 1952 defendant had unlawfully received payments from other contractors.

The shake down alleged in the indictment on which defendant was tried is supposed to have taken place in September, 1951.[5]

The trial judge permitted the evidence of other offenses to be received on the theories that it demonstrated (a) intent, and (b) plan, scheme or design.

The evidence could not show intent. Rider, the alleged victim of the alleged shake down charged in the indictment, testified to a particular conversation at a particular time and place in which defendant said things to him which were in no way ambiguous and clearly constituted attempted extortion if the jury found that the conversation took place.

Defendant met this evidence with a blanket denial of any such conversation ever having taken place, although he admitted having received lawful commissions from Rider.

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[5] At line 5 of page 21 of Brief for Appellant "1955" should of course read "1951".

The question for the jury was whether the conversation which Rider had testified to had taken place at all. If it took place, there was no question as to what defendant's intent was. Accordingly, there was no occasion in this case to receive evidence of other offenses, allegedly committed in 1952, for the purpose of showing what defendant's intent had been in September, 1951.

Nor was the evidence of the other offenses properly received on the theory that the other offenses constituted part of a plan, scheme or design to extort money from Rider. The other offenses had no connection with Rider, with Rider's business, or with any contract or transaction involving Rider. Furthermore, they were alleged to have taken place subsequent to the alleged conversation in which Rider was supposed to have been shaken down. For both of these reasons, the other offenses just could not possibly have [fol. 554] constituted part of a plan, scheme or design to extort money from Rider.

Thus the evidence of other offenses did not serve the purpose of showing either (a) intent, or (b) plan, scheme or design.

However, the Opinion of this Court at pages 8 and 9 holds that the evidence was properly received in order to show "intent, plan or scheme."

The Opinion reached this conclusion by a process of some confusion.

At page 8 the Opinion says:

> "But the question before the jury was whether Rider's story was to be believed or not, the defendant having vehemently denied it. The evidence in question was, therefore, relevant to explain Stirone's purpose or intent in soliciting money from Rider."

To this we answer that if the conversation which Rider related took place, defendant's intent to extort money was clear. The evidence of other offenses could not make it any more clear. The Opinion of the Court is wrong in saying that because defendant denied Rider's story, evidence of other offenses was received in order to show what defendant's intent had been if his denial was untrue.

The Court cites two cases at page 8. Neither of those cases have much to do with the problem. *U. S.* v. *Blount*, 229 F. 2d 669, 671, 672 is a case in which after having committed the shake down alleged in the indictment, the defendant later attempted to shake down the same victim again and used the telephone to do so. In the telephone conversation, the defendant admitted the earlier blackmail or extortion. Of course, evidence of this conversation was receivable as an admission of guilt of the offense charged in the indictment. In *U. S.* v. *Wall*, 225 F. 2d 905, there [fol. 555] was evidence that defendant was charged with having received money for obtaining the promotion of a postal employee. There was evidence that he had told the postal employee that $400 was usually asked and $400 was the usual amount. Evidence was then permitted to come in to the effect that on earlier occasions another employee had obtained a promotion by paying defendant $400, but still another employee had failed to obtain one after paying defendant only $300. The fact that the other earlier offenses in the Wall case corroborated the testimony as to the offense charged in the indictment in that case is obvious. The evidence fully supported the testimony that Wall had said $400 was the usual amount. There is no such background in the present case.

It is almost unbelievable that the evidence of other offenses in the present case was received on the theory that it proved scheme, plan or design (Opinion page 6) although the trial judge cautioned the jury (Opinion page 8) "that the fact that the defendant may have committed another similar act is not of itself any evidence that he is guilty of the offense charged in the indictment."

But if the evidence showed a plan, scheme or design to extort money from Rider, it was in "itself" some "evidence that he is guilty of the offense charged in the indictment."

Confusion can be resolved only by a new trial or judgment of acquittal.

3. Interstate Commerce

The testimony is that Rider acceded to appellant's demands on the day in question at which time Rider was receiving sand by railroad car intrastate, and therefore the crime being complete, there was no effect upon interstate commerce because there was no such commerce. [fol. 556] Appellant says that the fact of Rider unloading sand from river barge at the time the payments were made is immaterial.

Appellant submits that the Court was in error in citing with approval and as in point, the case of *Nick* v. *U. S.*, 122 F. 2d 660 (8 Cir. 1941) because that case is distinguishable from and not authority for the instant case. In the Nick case, the film was always in interstate commerce. It was part of a giant system whereby the film started its interstate journey from Hollywood, California and ended back in California, and at the time it was in the hands of any of the movie theaters for exhibition purposes, it was nonetheless in interstate commerce, and was part and parcel of a continuous interstate movement. Such are not the facts in this case.

In the other Eighth Circuit case cited by the Court *Hulahan* v. *U. S.*, 214 F. 2d 441 (8th Circuit 1954) as being in point, the facts there as to Counts 1 and 2 taken from the appellant's record are as follows:

> "Materials and supplies for the development were purchased from outside the State of Missouri, fir lumber coming from Washington and Oregon, shipment of which was handled on schedule through Robert Long Lumber Company of East St. Louis, Illinois. The lumber was shipped from Washington and Oregon in carload lots to Bissel Station, which adjoined the project, and brought by truck to the project. Schedules were set up for the delivery of the lumber, the schedule calling for approximately a carload of lumber each week, but the schedule was subject to the control of the witness, so it could be delayed or speeded up. Yellow pine lumber was purchased from several southern states: Arkansas, Louisiana, Texas and Tennessee. Bathtubs were shipped from Alliance, Ohio; garbage

> disposals from Los Angeles, California; screens from [fol. 557] Saginaw, Michigan; sheathing from Minneapolis, Minnesota; and plasterboard from Buffalo, New York."

The crucial interstate commerce element of the case was that the delivery schedule was under the control of the victim, and he could delay or accelerate. The victim was from California, and his whole business was interstate in nature. Hulahan is distinguishable from this case because Rider's business was purely local. Hulahan's business was interstate by its very nature. Hulahan's project was local but his business interstate. The Hulahan case is some authority for the proposition that any interstate commerce which might be affected is that which is involved as of the date when the demand is made.

The Court's theory in this case is that Rider's local activities were illegally involved simply because they concerned the sand which had previously moved in interstate commerce. This theory is at variance with that set forth in *U. S.* v. *Starlite Drive-In*, 204 F. 2d 419.

Appellant submits that the Court misinterpreted Rider's activities in this case. The evidence fully disclosed that Rider was a manufacturer of ready-mixed concrete. This was his business. He was not an importer of sand but only received the sand locally from a local corporation for use as one of the ingredients of his mixture for concrete.

We submit that Judge Hastie's Opinion as to the plant theory is equally applicable to the sand theory, and that there must be some direct drive, thrust or pinch directed at the interstate commerce. We submit that it is the effect upon interstate commerce that is the criterion of Congressional power. *U. S.* v. *Wrightwood Dairy Co.*, 315 U. S. 110, 62 S. Ct. Reporter 523. We submit that the Court regardless of Rider's business and activities applied Congressional power over interstate commerce far beyond the Constitutional limits; and that the Court's decision is at variance with the decisions of the United States Supreme [fol. 558] Court interpreting the commerce clause. The effect of the Court's opinion is far reaching, and beyond that which the framers of the Constitution ever intended.

The practical effect of this present decision would be that if the manager or cashier of a Food Fair Supermarket paid money under extortion or robbery, as defined, that this would be a violation of the Hobbs Act and a Federal offense even though purely local in nature, and only because certain food, articles or commodities were in the course of the Food Fair local business received from out of the state, and unloaded by the store. The effect of this decision is virtually to destroy any distinction between state and national jurisdiction because in our modern business almost every article we deal with has at sometime or another been in interstate commerce; and this is not the purpose of the commerce clause, as defined and limited by the Supreme Court of the United States.

We submit that since a criminal statute is involved that, the Act must be construed strictly, and that therefore it is required that any extortion must affect interstate commerce; and that this affectation must be directly to the commerce and not upon some subsidiary or incidental local business.

4. Reasonable Fear

Your Honorable Court did not pass upon the important question of the reasonableness of the fear. Not only must there be fear but such fear must be reasonable. There was no showing of such fear in the case at bar. See *U. S.* v. *Green*, 246 F. 2d 155 at 159. Any fear of economic loss was not reasonable under the circumstances.

The majority Opinion discusses two theories of guilt under the guise of phase. The Court, however, does not pass upon the proposition that it was error for the Government to try the appellant upon some other theory of guilt [fol. 559] other than the one charged in the Indictment; and the Opinion of the Court did not pass upon appellant's argument that he had been denied due process of law because of the change of theory, and did not discuss, overrule or distinguish the case of ***U. S.* v. *Kram***, 247 F. 2d 830 (3rd Circuit.)

The appellant contends that in order to sustain this conviction, the proof must show that the extortion affected interstate commerce. There was no proof on this subject whatsoever. The Court charged the jury that commerce was affected as a matter of law. This we urge was error because the alleged extortion was not directed at interstate commerce itself but was directed at the loss of a contract, and any burden upon the victim by loss of said contract was not something the natural effect of which was to affect interstate commerce coming or going. In other words, the Government failed to prove a natural effect on interstate commerce.

[fol. 560]

CONCLUSION

For the reasons set forth herein, we respectfully submit that this petition for a rehearing should be granted.

Michael von Moschzisker, Vincent M. Casey, V. J. Rich, Margiotti and Casey, Attorneys for Appellant.

CERTIFICATE OF COUNSEL

We hereby certify that this petition for a rehearing is presented in good faith and not for delay.

Michael von Moschzisker, Vincent M. Casey, V. J. Rich.

[fol. 561] [File endorsement omitted]

[fol. 562]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

ANSWER TO APPELLANT'S PETITION FOR REHEARING—Filed January 14, 1959

The United States of America answers the petition of appellant, and respectfully represents to this Court that the Petition for Rehearing should be denied because the reasons for granting the rehearing set forth in appellant's petition are the same and identical reasons as set forth in appellant's brief on appeal, and argued orally before the Court.

Hubert I. Teitelbaum, United States Attorney.
Thomas J. Shannon, Assistant United States Attorney.

[fol. 563] Certificate of service (omitted in printing).

[fol. 564]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

UNITED STATES OF AMERICA,

v.

NICHOLAS A. STIRONE, Appellant.

On Petition for Rehearing

Before: Biggs, Chief Judge, and Goodrich, McLaughlin, Staley and Hastie, Circuit Judges.

OPINION OF THE COURT—Filed January 27, 1959

PER CURIAM.

A petition for rehearing is presented for our consideration. The grounds urged therein have been fully argued to this court. We find no merit therein that would warrant a rehearing. Accordingly it will be denied.

Biggs, Chief Judge, dissenting.

A fatal variance appears between the charge of the indictment and the proof. This court held correctly that the indictment charged Stirone with obstructing the receipt of [fol. 565] sand at Rider's plant but concluded that it was not error for the trial court to have charged that the interference with interstate commerce prohibited by the Hobbs Act, 18 U.S.C., Section 1951, could be found either on the basis of interference with the receipt of the sand or on the ground of obstruction with the shipping of steel from the Allenport plant of the Pittsburgh Steel Company which was in course of construction. Stirone was therefore tried on two charges. One, obstruction of the receipt of sand, and two, interference with delivery of steel from a plant not yet built. The first charge was laid in the indictment. The second was not. The doctrine of Berger v. United States, 295 U.S. 78, 81 (1935) cannot cure the error. It is clear in Berger that the crime for which Berger was convicted was within the words of the indictment, see 295 U.S. at pp. 81-83: the objection here is that the allegations of the indictment do not charge the crime for which Stirone was convicted.

I am also in accord with the views expressed in Judge Hastie's dissenting opinion. The statute is extended unreasonably to embrace interference with prospective distribution of steel from a factory in course of construction. The Allenport plant of the Pittsburgh Steel Company is not and was not a facility in interstate commerce. Cf. Mitchell v. Vollmer & Co., 349 U.S. 427 (1955); Archer v. Brown & Root, Inc., 241 F.2d 663, 669 (5 Cir. 1957).

Stirone preserved his rights by appropriate objections.

I therefore must respectfully dissent from the order of this court denying rehearing.

Judge Hastie shares these views and joins in this dissent.

[fol. 566]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

Present: Biggs, Chief Judge, and Goodrich, McLaughlin, Staley, and Hastie, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING— January 27, 1959

After due consideration the petition for rehearing in the above-entitled case is hereby denied.

By the Court, Goodrich, Circuit Judge.

Dated: January 27, 1959

[File endorsement omitted]

[fol. 567]

IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,543

[Title omitted]

ORDER STAYING ISSUANCE OF MANDATE—January 31, 1959

Pursuant to Rule 36 (2) of this Court, it is Ordered that issuance of the mandate in the above cause be, and it is hereby stayed until March 4, 1959.

Goodrich, Circuit Judge.

[File endorsement omitted]

[fol. 568] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 569]

SUPREME COURT OF THE UNITED STATES

No. 722, October Term, 1958

NICHOLAS A. STIRONE, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 27, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.